

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
W.R. Grace & Co., et al., .
Debtor(s) . Bankruptcy #01-01139 (JKF)
.....

Wilmington, DE
October 24, 2005
12:00 p.m.

TRANSCRIPT OF OMNIBUS HEARING
BEFORE THE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY JUDGE

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1 THE CLERK: All rise.

2 THE COURT: Good afternoon. Please be seated. This
3 is the matter of W.R. Grace, Bankruptcy #01-1139. The list of
4 participants I have by phone are Lori Sinanyan, David Bernick,
5 Andrew Craig, Steve Baron, Leslie Epley, Brian Kasprzak, Scott
6 Baena, Sean Walsh, Matthew Kramer, Allyn Danzeisen, Daniel
7 Speights, Mary Martin, Michael Brown, Darrell Scott, Edward
8 Westbrook, Joseph Radecki, Christopher Candon, Tiffany Cobb,
9 John O'Connell, Jonathan Brownstein, Monique Almy, Sarah
10 Edwards, Marti Murray, Daniel Glosband, David Siegel, Paul
11 Norris, Mark Shelnitz, Dale Cockrell, Michael Davis, Michael
12 Insalco, Van Hooker, and David Parsons. Good afternoon.

13 MS. BAER: Good afternoon, Your Honor, Janet Baer on
14 behalf of the Debtors. Your Honor, with respect to item #1 on
15 the agenda, that matter's been continued to the November
16 hearing. With respect to items #2, 3, and 4 these relate to a
17 matter in the State of Montana. At the Montana Plaintiff's
18 request these matters are all being continued to the December
19 hearing.

20 THE COURT: Just one second. All right.

21 MS. BAER: Your Honor, with respect to item #5, the
22 matter regarding the New Jersey Department of Environmental
23 Protection, that matter is being continued to the November
24 hearing on agreement of the parties. And the same with #6,
25 Your Honor, which relates to it, the Debtor's Motion for An

1 Injunction.

2 THE COURT: Okay.

3 MS. BAER: That takes us to agenda item #7, which is
4 the Debtor's Fifth Omnibus Objection. Your Honor, remaining on
5 the 5th omnibus objection are the matter of Peter Pierson's
6 claim. There's a new briefing scheduled for Summary Judgment
7 Motions on that matter, which is contained in the Order I have
8 submitted and will be handing up. There are a number of
9 environmental matters on there which we are working on a
10 stipulation on and hope that by the next hearing those will be
11 removed from that matter. And there's a third matter involving
12 CHL. That matter's being withdrawn, so hopefully the next time
13 I come before you this Fifth Omnibus Objection will be taken
14 care of, but for the Peter Pierson matter, which will be set
15 for substantive hearing in January.

16 THE COURT: All right. Thank you.

17 (Pause in proceedings)

18 THE COURT: All right, that Order's entered, thank
19 you.

20 MS. BAER: Your Honor, agenda item #8 is the Debtor's
21 eighth Omnibus Objections to claims. There is one remaining
22 contested objection, it's to the claim of National Union. We
23 have been negotiating a stipulation with Mr. Davis on behalf of
24 National Union. I heard from him this morning that the
25 stipulation is -- looks to be okay in form, but he's waiting

1 for his client's authority. He promises we will resolve this
2 and get this off your agenda by the next hearing. So I have an
3 Order continuing it to the next hearing.

4 THE COURT: All right. Thank you.

5 (Pause in proceedings)

6 THE COURT: Okay, that Order's entered.

7 MS. BAER: Thank you, Your Honor. Agenda item #9 is
8 the Debtor's Eleventh Omnibus Objections to Claims. There are
9 three matters, they're all being resolved by this Order, and
10 you will not see this one on your calendar any more.

11 THE COURT: Okay. Thank you.

12 (Pause in proceedings)

13 THE COURT: And counsel for the Claimants are aware
14 that you presented this Order?

15 MS. BAER: Yes, they are, Your Honor. We've
16 discussed it with all of them and they've seen it.

17 (Pause in proceedings)

18 THE COURT: Okay, that Order's signed.

19 MS. BAER: Thank you, Your Honor. That moves us to
20 agenda item #10, which is the Debtor's Fourteenth Omnibus
21 Objections to Claims. This is a nonsubstantive objection to
22 expressed as property damage claims. Your Honor, it falls into
23 a few categories, but it's very simple. There were a number of
24 claims that were objected to because there was no documentation
25 filed whatsoever. We received responses from Thomas Louis of

1 the firm of Louis Slovat & Covosich in Montana. As it turns
2 out he provided some documentation with response to a different
3 omnibus objection quite a while ago and the two are not put
4 together. We have worked out a -- or we have agreed with
5 Mr. Louis to withdraw the Fourteenth Omnibus Objection, which
6 was again nonsubstantive, because he has provided
7 documentation. The substance of the claims will be dealt with
8 in the Fifteenth Omnibus Objection, where we've also filed
9 objections.

10 THE COURT: All right.

11 MS. BAER: The second portion of the claims were a
12 number of ZAI claims. The objection was that they were filed
13 untimely. That was a mistake. They should not have been on
14 this omnibus objection, but because they were filed on property
15 damage claim forms the objection got filed. It shouldn't have
16 been. We've worked out a stipulation with Darrell Scott, who
17 represents all of these Claimants, agreeing that we will
18 reclassify these claims as ZAI claims. Everybody reserves all
19 rights, and we'll take those up when and if appropriate, and I
20 do have a stipulation, which we will file with the Order I'll
21 be handing up that resolves that matter.

22 THE COURT: Okay.

23 MS. BAER: Your Honor, there's one objection to the
24 claim of William Wittenberg, which is also on status on the
25 Fifteenth Omnibus Objection. We will withdraw the objection on

1 the Fourteenth Omnibus Objection and take it up with respect to
2 the Fifteenth Omnibus. There's one claim on the Fourteenth,
3 Macerich Fresno Limited Partnership. That was an objection to
4 a late claim. As it turns out, the claim was not late. It was
5 a supplement to an earlier and timely filed claim which is
6 being dealt with on the Fifteenth Omnibus Objection. We have a
7 stipulation with them which will be attached to the Fourteenth
8 Omnibus Objection that resolves that, consolidates the two
9 claims, gets rid of the one that was the supplement, and then
10 just keeps the one remaining claim, and those objections will
11 be taken up in substance on the Fifteenth Omnibus.

12 THE COURT: All right.

13 MS. BAER: The last claim, Your Honor, is a claim of
14 Edward Cur. This is a pro se Claimant. He filed a handwritten
15 response that basically says he has a lot of Grace Products in
16 his property and you should sustain the objection. Your Honor,
17 he's attached no documentation whatsoever. To the extent that
18 his claim relates to a traditional asbestos property damage,
19 which if you read the response looks like he has some
20 acoustical plaster, that's what he claims, we would ask that
21 that objection be sustained to the extent that he is claiming a
22 claim for ZAI, we would say that this withdrawal would be
23 without prejudice to that. We do not have a bar date for ZAI.
24 We have not asked for ZAI claims. We're not asking for a
25 ruling on that.

1 THE COURT: All right, that's fine.

2 MS. BAER: Your Honor, at this point I'd like to hand
3 up then the Order with the attached two stipulations.

4 THE COURT: Okay. Thank you.

5 (Pause in proceedings)

6 THE COURT: Okay, that Order's signed.

7 MS. BAER: Your Honor, that takes us to agenda item
8 #11, but before we get to that, we're now moving into matters
9 that relate to both asbestos personal injury estimation and
10 asbestos property damage estimation. I'd like to take one
11 matter out of order, and that is I'd like to take the asbestos
12 property damage matter first. We have a very quick issue we'd
13 like to resolve with respect to the briefing schedule and the
14 Fifteenth Omnibus Objection, and my colleague Michelle Browdy
15 will address that.

16 THE COURT: Okay.

17 MS. BROWDY: Good afternoon, Your Honor.

18 THE COURT: Good afternoon.

19 MS. BROWDY: May it please the Court, Michelle Browdy
20 on behalf of the Debtors, and I'll be very brief because I know
21 that there's a lot to cover on the personal injury side.

22 First, the Fifteenth Omnibus Objection, which we filed on
23 September 1st, making all substantive objections to the
24 property damage claims so we could identify by that time, it's
25 set for status today. I want to give a brief update.

1 Originally over the summer we were identifying that we
2 were dealing with roughly 4,000 property damage claims. The
3 Court may recall by the last hearing we had parsed through
4 those and we realized approximately 3,400 of those were
5 traditional asbestos property damage claims with a miscellany
6 of other claims making up the rest. We've been working hard on
7 those claims, including entering into a significant stipulation
8 with the Speights Firm that was filed on Friday dealing with
9 claims that had no proof of product identification, and our
10 expectation is that by Monday the 31st we will be down to a
11 total of 2,200 property damage claims of the original 4,000,
12 and only 1,800 of those, or so, will be traditional property
13 damage claims.

14 Another result of the stipulation we have entered into
15 with the Speights Firm, and Mr. Speights is on the phone, he
16 can correct me if I'm mistaken, but the implication is for the
17 hearing set for Monday the 31st on the Speights claims there
18 were originally going to be three items up, and now only two
19 items. Specifically we will still need to address the Anderson
20 Memorial in state and out-of-state claims, but the California
21 conspiracy claim issue is now going to be moot.

22 The other significant issue, though, that we need to take
23 up with the Court today for the Fifteenth Omnibus Objection the
24 Court, by on Order entered September 19th, required all
25 responses to be due today, so it gave the Claimant seven weeks

1 to respond. Replies, including evidentiary support, is
2 supposed to be due on Monday the 31st, with surreplies on
3 November 4th. Your Honor, since Friday we've received more
4 than 700 responses, and they were still continuing to pour in
5 as of last night, and as a practical matter we just cannot file
6 our reply by Monday the 31st with evidentiary support. I'd
7 like to hand up a proposed schedule to the Court if I may.

8 THE COURT: Thank you.

9 MS. BROWDY: And Your Honor may recall, in fact, that
10 the Order dated September 19th did have a provision that if the
11 process became unmanageable we could break the process up into
12 batches, and in fact the Fifteenth Omnibus itself in the first
13 10 pages or so had proposed dealing with these claims in
14 batches. And what we propose, Your Honor, is to not file reply
15 papers on Monday the 31st, to use the November 14th hearing for
16 a status conference, and I think you'll see -- I handed up two
17 pieces of paper. One was a two-page sheet that identifies the
18 categories of claims to which we've -- to which we've made
19 objections in the Fifteenth, and this is a chart taken from the
20 Fifteenth Omnibus Objection itself. And then the one-page
21 piece of paper identifies how we propose hearing those, and
22 again, my proposal is that for the November 14th hearing we
23 identify which batches it will make sense to set for briefing
24 and argument at the December, January, and February omnibus
25 conferences. We can break up, again, smaller bites of these

1 objections and set schedules on those, and as the chart
2 indicates, and as our Fifteenth Omnibus paper itself indicated,
3 we believe that some of the objections actually don't have to
4 be heard until as part of the estimation process, so they won't
5 need a separate briefing argument schedule.

6 So that's our proposal, Your Honor, but again, as a
7 practical matter, we cannot review and respond to a thousand
8 claims with evidentiary support by the 31th.

9 THE COURT: Has this been circulated with the
10 parties?

11 MS. BROWDY: Your Honor, I just -- again, these
12 claims were pouring in over the weekend, so we literally just
13 put it together yesterday. There is a version of it in the
14 Fifteenth Omnibus Objection itself where again we had initially
15 proposed handling these objections in batches, and again, the
16 September 19th Order, docket 9473 at paragraph 5 had indicated
17 to the extent that the Fifteenth Omnibus Objection to Claims
18 proves unmanageable the Court will address requests to
19 bifurcate this omnibus into separate batches or docket entries.
20 And that's what we're requesting now as part of the status.

21 THE COURT: All right. So for November, according to
22 this sheet for the people who are on the phone who may not have
23 seen it that you've passed up, for November you want to discuss
24 the procedural issue of how estimation phase one should
25 proceed, and that will deal with constructive notice, the

1 Daubert standards on dust sample and methodology --

2 MS. BROWDY: Actually, that's just reflecting that
3 that is called for in the PD estimation CMO, so that is
4 definitely on for November 14th, and then the question becomes
5 what else could we even fit on the schedule for the 14th?

6 THE COURT: Okay. And your proposal is to do is
7 status conference on the Fifteenth Omnibus, and then at that
8 time take a look at the briefing and argument schedules for
9 what can be done in December, January, and February on the
10 merits?

11 MS. BROWDY: Yes, Your Honor. And then that would
12 also -- we've have to strike the October 31st reply date, and
13 then November 4th surreply date.

14 THE COURT: Okay. Then for December -- well --

15 MS. BROWDY: And then what I've indicated in the next
16 box, Your Honor, is that somehow between the December, January,
17 and February omnibus hearings there are a handful of different
18 types of claims to be addressed, and we would want to divide
19 them up in a way that makes sense, and if by deferring this to
20 status in mid-November that will give us an opportunity to
21 circulate this chart to the parties and try to come up with
22 some agreement for which should be heard at which conference.

23 THE COURT: Okay. Then I apologize, but I don't
24 recall, do you have dates in March for an estimation hearing?
25 Did we get as far as dates?

1 MS. BROWDY: Your Honor, the PD estimation CMO called
2 for a trial to be set in March at the January or February
3 status conference.

4 THE COURT: Okay. I suggest that you folks, if we're
5 really going to do a trial in March, had better contact my
6 staff in Pittsburgh a little sooner, because with all the other
7 cases getting into either litigation or plan confirmation mode
8 I'm already starting to fill up hearing dates in March.

9 MS. BROWDY: Thank you, Your Honor. We'll contact
10 and find out the schedule and confer with Mr. Baina.

11 THE COURT: Okay. And then the phase two you're
12 proposing for about September, that's too far away right now to
13 worry about so -- okay. Good afternoon.

14 MR. LOIZIDES: Yes, good afternoon, Your Honor, Chris
15 Loizides. I am Delaware counsel for the Speights & Runyan firm
16 Claimants, also for some states and some Louisiana Claimants
17 represented by the firm of Dies & Hile, and also Delaware
18 counsel for Perrini Corporation. I think the Perrini
19 Corporation matter has been continued. It's -- from what I
20 understand it's been recharacterized, it's not an asbestos
21 property damage claim, it is something else. I think that was
22 dealt with earlier.

23 With respect to the Fifteenth Omnibus Claims Objection, I
24 have to confess, most of the -- I believe most of the responses
25 are being filed by Speights & Runyan through my firm, and as of

1 yesterday around 6 p.m. we had -- I think we had filed around
2 682 of them. It might not be quite the right number. And
3 we're continuing to file them. I don't know if -- I hope
4 someone is on the phone today from the Speights & Runyan firm.

5 The only thing that I would mention is we are certainly
6 doing our very best to try to get all of these filed by today,
7 which is the deadline of course. And I believe that we will be
8 able to. It is conceivable -- the only thing I would just
9 mention to be up front with the Court, and I was here during
10 the Pioneer hearing this morning, it made me a little nervous,
11 of course those were very different facts, is there may be a
12 few stragglers, and if we're gonna break these into groups
13 which -- and I have discussed this with Mr. Speights, but there
14 seems to be a reasonable suggestion, that if there are a couple
15 stragglers that we simply --

16 THE COURT: Well, I think we can extend that filing
17 date a day or two just to accommodate the need to get
18 everything done when you're filing that many, if we're going to
19 extend the hearing date anyway, I don't see that that causes a
20 problem --

21 MR. LOIZIDES: Yeah.

22 THE COURT: -- and with respect to this morning, we
23 were talking about a 3½ year delay, not a 3½ hour delay.

24 MR. LOIZIDES: I realize that, Your Honor, I -- and I
25 just happen to be here and I wanted to mention that. With

1 respect to the firm of Dies & Hile, and I don't know if
2 Mr. Dies is on the phone or not, I have tried for weeks now to
3 get a hold of him. His house and his office were both
4 destroyed -- I'm trying to think which hurricane it was. Well,
5 I think it was Rita, and I did get an e-mail from him today,
6 and he wants to file some form of place holder response. I
7 don't know how the Court wants to deal with this. Perhaps --

8 MS. BROWDY: Actually --

9 MR. LOIZIDES: Perhaps it has been dealt with, but I
10 haven't been in touch with them.

11 MS. BROWDY: Thank you, Your Honor. Michelle Browdy
12 again on behalf of the Debtors. In fact, I e-mailed Mr. Dies
13 this morning and responded to an e-mail from him, and the Court
14 may recall we addressed the issue, for example, that a number
15 of Louisiana Claimants needed additional time to respond, and
16 we addressed that at the last hearing. That needs to be
17 memorialized in an order, but we have an agreement. Their
18 papers are not due today, they're due in January.

19 UNIDENTIFIED SPEAKER: The order's on file.

20 MS. BROWDY: Oh, the order is on file. So, we're
21 working with Mr. Dies. I don't anticipate any problems.

22 MR. LOIZIDES: This is -- Your Honor, that is
23 correct. But I believe that that Order only applies to certain
24 Louisiana Claimants who were destroyed by Katrina. This
25 relates more to the second hurricane --

1 THE COURT: You know --

2 MR. LOIZIDES: Again --

3 THE COURT: -- I'm sorry, I'm probably not alone in
4 the United States in confessing the fact that I don't know
5 which hurricanes have caused which damage any more. You're
6 just doing so much to the South.

7 (Laughter)

8 THE COURT: I don't really care which hurricane. If
9 something's home and office was destroyed they obviously cannot
10 get in touch with clients, and if the Order says Katrina I
11 think we can expand the Ordered to include any and all
12 hurricanes, or tropical storms --

13 (Laughter)

14 THE COURT: -- that cause this kind of damage.

15 MS. BROWDY: Thank you, Your Honor. I believe we
16 already have that agreement with Mr. Dies.

17 MR. LOIZIDES: Okay, that may be true, but as I said,
18 I was -- I just wasn't aware of that. So with that, Your
19 Honor, as I said, we'll be trying to file all of these
20 responses today. There may be a few stragglers, and I don't
21 know if Mr. Speights is on the phone if he wishes to address
22 any of this. I haven't been able to touch base with him.

23 THE COURT: Mr. Speights? Mr. Speights, are you on
24 the phone? He's apparently not on, Mr. Loizides.

25 MR. LOIZIDES: Your Honor, as I said, without having

1 spoken to him, you know, I think that if we can get some
2 additional time to complete the filings, at least from my
3 perspective, I don't see --

4 THE COURT: Well, how much?

5 MR. LOIZIDES: Is a week too much? I mean, if it's
6 too much we'll do it sooner. I think we'll get everything done
7 today. It's really a matter of double checking everything.

8 (Court speaks with operator)

9 MR. SPEIGHTS: Good morning, Your Honor. I've been
10 listening but I couldn't get anybody to hear. I was on the
11 wrong line.

12 THE COURT: I'm sorry, Mr. Speights. Okay, I guess
13 maybe --

14 MR. LOIZIDES: I would defer to Mr. Speights on this.

15 THE COURT: All right.

16 MR. SPEIGHTS: Well, actually, I think it's just a
17 mechanical issue of getting everything to local counsel and
18 getting everything filed, and I talked to Mr. Perry who's
19 actually doing that, and I think we're gonna probably get
20 everything filed today, but I appreciate your giving us, you
21 know, two or three days to -- if it's some mechanical problem.
22 We've done our work, it's just getting this massive number of
23 claims on file, as I understand it.

24 THE COURT: All right. Is Thursday enough time this
25 week?

1 MR. LOIZIDES: That's fine, Your Honor. As I said,
2 we were planning on getting everything filed today. It's
3 really a question of double checking the list and making sure
4 someone didn't fall through the cracks.

5 THE COURT: All right, that's fine. Then I'll say
6 the absolute date is by Thursday, but please, the sooner you
7 can do it the better, because I'm already facing one
8 continuance, which is, frankly, not unexpected, but
9 nonetheless, it's here so I don't want to have to do another
10 one.

11 MR. SPEIGHTS: And on Ms. Browdy's remarks, Your
12 Honor, I certainly have no objection to pushing those deadlines
13 and having the status conference at the November hearing. I
14 have not seen what she's provided the Court, and as I
15 understand we'll have an opportunity to comment on that and how
16 we should configure the process of dealing with these
17 objections. But I certainly don't have a problem with having
18 the status conference on the 14th and pushing back the two
19 deadlines on the replies and surreplies.

20 THE COURT: All right. That's good, thank you,
21 Mr. Speights. And yes, she will circulate this, and it's
22 broken into categories the way the Debtor categorizes them.
23 You know, if there's a disagreement about that -- probably not.
24 They're pretty broad categories. But you folks can discuss all
25 of it and see what you think would be a rational proposal for

1 breaking the categories down.

2 MS. BROWDY: Thank you, Your Honor.

3 THE COURT: Okay, thank you. Do you need an Order of
4 some sort, or --

5 MS. BAER: Your Honor, the Fifteenth Omnibus
6 Objection is up for status. We can just indicate on the docket
7 that it's been, you know, continued to November 14 for status.

8 MS. BROWDY: I think we probably now will need an
9 Order, though, on those reply and surreply dates. We could
10 pass it up in the next couple days. Would that be okay, Your
11 Honor?

12 THE COURT: Sure. Just do it on a Certification of
13 Counsel. Can you folks work out the dates? Do I have to take
14 time to do it now, or can you work out the continuation dates?

15 MS. BAER: I think the anticipation is we will
16 circulate this scheduling work out and try to work out dates
17 with respect to the schedule. I think the only thing we need
18 to have is an -- on an Order is that these two dates that you
19 had in your previous Order have been vacated.

20 THE COURT: Well, they're vacated but I'd like to get
21 new dates entered. So see if you can work them out, okay?

22 MS. BAER: We'll work through that, Your Honor.

23 THE COURT: All right, thank you. I'm sorry, which
24 agenda item is the Fifteenth Omnibus today?

25 MS. BAER: It is agenda item #14.

1 THE COURT: Fourteen. All right, just one second
2 please.

3 (Pause in proceedings)

4 THE COURT: So I'm continuing it for status
5 conference to the November omnibus and a COC changing the
6 response and reply dates will be submitted, and if you're not
7 able to I guess we'll address them on the 14th, but hopefully
8 you can get some of the information filed before then. It will
9 be a more productive status conference if I at least have
10 something on the other side.

11 MS. BAER: We understand, Your Honor.

12 THE COURT: Okay, all right, thank you.

13 MS. BAER: Your Honor, one other thing on the
14 Fifteenth Omnibus Objection is we have worked out a number of
15 agreements with various parties, especially with respect to
16 environmental claims, that the property damage objection
17 process, the Fifteenth Omnibus Objection, was not intended to
18 cover regular environmental claims, and we've worked out
19 stipulations with most of those parties that those will be in
20 fact reclassified as environmental claims not dealt with in the
21 Fifteenth Omnibus Objection, and I will be submitting a COC
22 with an Order memorializing those various agreements and
23 stipulations. And on the parties where we have not worked it
24 out, Perrini being one of them, City of Cambridge another, and
25 the Massachusetts Bay, I think it's Transportation Authority,

1 we've just given them an additional amount of time to respond
2 so we can work out a stipulation. We do not anticipate taking
3 up any regular environmental claims at this time. So we will,
4 again, submit a Certification of Counsel with all of those
5 stipulations.

6 THE COURT: Okay.

7 MS. BAER: Your Honor, that takes us now to agenda
8 item #11, which is the Debtor's Motion for Leave to Take
9 Discovery of Claimant's Attorneys. This relates to asbestos
10 personal injury, and I'm gonna turn the podium over to Barbara
11 Harding for that.

12 MS. HARDING: Good afternoon, Your Honor. If it
13 pleases the Court I will address the Court from counsel table
14 so I can work the screen, is that all right?

15 THE COURT: That's fine. And you can be seated. You
16 don't need to stand.

17 MS. HARDING: Okay, thank you, Your Honor. As the
18 Court is well aware, the Debtor's filed a motion seeking to
19 serve a two-page questionnaire on attorneys of record in the --
20 with respect to the Grace personal injury pre-petition claims.
21 Your Honor, the -- and actually I have several slides that I'm
22 gonna be showing today, Your Honor. I'm happy to bring you a
23 copy.

24 THE COURT: Thank you.

25 (Pause in proceedings)

1 THE COURT: Are these just prints of what you're
2 showing on the Power Points?

3 MS. HARDING: Yes, they are, Your Honor.

4 THE COURT: All right.

5 MS. HARDING: Your Honor, the purpose of the
6 questionnaire is to seek information that bears on the
7 reliability or unreliability of the underlying medical data
8 supporting the personal injury claims. There have been several
9 objections, as the Court is well aware. I'm not gonna try to
10 address each objection that was filed individually. What I've
11 done though is I've gone through all the objections, and I
12 think that the objections can be classified into three major
13 categories.

14 First, the objectors assert that this isn't silica, and
15 they didn't file silica claims, and therefore the attorney
16 questionnaire shouldn't be issued. Second, the objectors also
17 make the claim that the information that we're seeking isn't
18 relevant or necessary to the estimation. And third, the third
19 major category of objections is that the Court doesn't have the
20 authority to issue the questionnaire.

21 The Debtors believe very strongly that the information
22 that they're seeking is essential to the estimation, and I will
23 attempt to address all those objections as I go through the
24 presentation.

25 First, Your Honor, I think it's very important to note

1 that from the beginning of this case the Debtors have challenge
2 the medical data underlying these claims. I think in almost
3 every major pleading this issue as been raised. As you can
4 see, we said that we were -- a central goal of what we were
5 trying to do is to define a universe of valid claims. We
6 wanted to adjudicate the validity of certain bodily injury
7 claims and evidence, the evidence underlying them. And again,
8 it's -- I think it's been raised repeatedly, and even before
9 the Debtors filed for bankruptcy the Debtors had a belief that
10 there was -- there were significant problems with the data
11 underlying the medical evidence.

12 Again, here's another slide that I think has been used
13 repeatedly before the Court demonstrating that, you know, we're
14 seeking to ask the Court to look at the reliability of the
15 medical evidence and in part also the bias and fraud problem
16 associated with the doctor's screening companies that are
17 producing that evidence.

18 And what have we said all along about the underlying
19 claims and the evidence that's there? We've said four basic
20 things. That the mass x-ray screenings were unreliable, we've
21 said that the PFTs are easily manipulated and unreliable.
22 We've said that the claims rates that these Debtors and other
23 Debtor and Defendants around the country are seeing bear no
24 relationship at all to incidence of disease and to past
25 consumption or exposure to asbestos. And we've identified

1 numerous audits and studies that have recognized this problem
2 in the past.

3 Indeed, we even in our original questionnaire to the
4 Claimants, that I think was first filed back in January, I'm
5 not sure, maybe even earlier, but we asked there, we asked for
6 information on the relationships between the lawyers and the
7 law firms and the doctors and the screening companies. Again,
8 we asked for it with respect to the B readers.

9 So I raise this because Grace has continually maintained
10 from the beginning through all of these different pleadings and
11 everything that we've done that these -- that the underlying
12 medical evidence isn't valid, and that that's a -- has
13 substantial relevance to the estimation because large
14 percentages of the claims, we believe, are based on unreliable
15 medical evidence.

16 I say all this because -- and actually, the Court
17 recognized that even in June, June 27th. I raise those issues
18 because all of this occurred prior to the issuance of the
19 Silica opinion. We've raised all these issues, we've put
20 forward the evidence. We've been seeking the discovery, we've
21 been seeking the information. Well prior to Judge Jack's
22 decision on June 30th, 2005.

23 Now -- one second please. The question now is, is the
24 silica decision important to what the Debtors are trying to do
25 in this litigation? Absolutely. It couldn't be more

1 important. We now have a Federal District Court Judge who has
2 acknowledged and found, made findings, that support the
3 allegations and the positions that the Debtors have been taking
4 all along. One of the statements from Judge Jack's opinion,
5 "This evidence of the unreliability of the B reads performed
6 for this NDL is matched by evidence of the unreliability of B
7 reads and asbestos litigation."

8 THE COURT: Yes, but here's the problem. She's made
9 those statements apparently based on some evidence. I don't
10 have any such evidence. Number one, I don't have an NDL, and
11 number two, I don't know that you can compare B reads in this
12 case with B reads in other cases because I don't know that the
13 -- a) Plaintiffs are the same, b) B readers are the same, c)
14 doctors are the same, d) that the type of asbestos exposure was
15 the same. So there are a host of factors all of which seem to
16 me to make this relevant perhaps to the Trust that's going to
17 be evaluating claims, but why is it relevant to the Debtor?

18 MS. HARDING: Your Honor, I think it's relevant right
19 now, and the reason we raise it is because we're seeking the
20 information to be able to demonstrate that to the Court.

21 THE COURT: But how are you going to get that
22 information? You know, it seems to me that there's a
23 structural problem, and maybe I just don't understand how you
24 intend to make use of this information. If there was a claims
25 bar date and people were filing claims with medical evidence

1 attached and you were looking for objections to claims to say
2 this B read is unreliable because -- of whatever reason, you're
3 going to allege, then I think I could understand the relevance
4 of why you want to get some information. I don't know about
5 the questionnaires per se, but why you want some information to
6 look at the B reads. But that isn't the structure that this
7 case is in. That's not the posture the case is in. The
8 posture is not in a position of having claims filed by asbestos
9 Plaintiffs, and at the moment, based on the fact that you're
10 looking for 524(g) injunctive relief, if anything those claims
11 are going to be processed through the TDP process.

12 So I -- I'm -- there's a disconnect in how -- in what I am
13 understanding that you're driving at. I'm not following the
14 process by which you're trying to a) get the information, or b)
15 why you need it from the attorneys.

16 MS. HARDING: Well, Your Honor, first of all, with
17 respect to the estimation, the reason that the information is
18 relevant and important at this stage is because the Plaintiff's
19 Committee and other Committees have taken the position that
20 past settlement history is the best evidence of what the
21 estimation in this Court should be for current claims and for
22 future claims.

23 THE COURT: But we've gone through that. They'll
24 present their evidence, and you're going to present your
25 evidence that says it's not the best, and I have to decide

1 whether the plan constitutes a form of settlement negotiation
2 in which it may be relevant, or whether it doesn't constitute a
3 form of settlement negotiation in which it may not be relevant.

4 MS. HARDING: And Your Honor, I think you just said
5 exactly what we're looking -- you said they're gonna present
6 their evidence, we have to present our evidence, but we have to
7 get the evidence to present it. And that's what this process
8 is for. We believe that this -- that the attorney
9 questionnaire, along with the Claimant questionnaire, will
10 provide us evidence that will enable us to show the Court that
11 systematically huge categories of claims should not -- should
12 receive very little to no value in this estimation, for the
13 current claims, and going forward for future claims.

14 THE COURT: Well, aren't there already published
15 studies that do things like tell you that within any given
16 population of exposure to asbestos disease that X percentage
17 will develop maybe plural thickening but are -- be sometimes
18 referred to as the asymptomatics, that there will be another
19 percentage that will have some form of cancer, some percentage
20 that will have a form of lung cancer, and a small percentage
21 that will develop mesophelioma? I mean, are those studies
22 unreliable?

23 MS. HARDING: Your Honor, there are lots of -- lots
24 and lots -- thousands of studies addressing asbestos disease,
25 and actually, those are the very kinds of studies -- some of

1 the evidence that the Debtors plan to present are precisely
2 those kinds of studies. And one of the things that we intend
3 to present is that those -- that many of those studies that are
4 out there demonstrate that with respect to certain exposures
5 that somebody might have to asbestos that those exposures don't
6 lead to asbestos disease, particularly asbestosis, which
7 requires 25 fiber years of exposure to get it.

8 And so the important part here is that that's the exposure
9 side of the equation. The other side of the equation has
10 nothing really to do with exposure except to the extent we
11 don't think that they've had sufficient exposure. It goes to
12 the question of whether they even had a disease to begin with,
13 and that -- if we can't rely on --

14 THE COURT: But how are you going --

15 MS. HARDING: -- past studies --

16 THE COURT: But how are you going to get that
17 information unless you actually have the B read documents
18 attached to something like a ballot or a Proof of Claim, or a
19 demand for relief? I mean, at the moment we have a Committee
20 that's out there and we know that we've got 188,000 asbestos
21 Claimants that may file some current claims that may file some
22 request against a Trust for relief, but until you get that
23 information I don't think as a global matter you can just
24 say, "All of the B reads that were ever done in the past are
25 unreliable."

1 MS. HARDING: Absolutely. That's why we're seeking
2 the evidence. In other words, the Claimant's questionnaire we
3 expect if the Claimants comply with the Court's Order that we
4 will be getting in those B reads, and we'd be getting in that
5 information. We'll then know what percentage -- and actually,
6 if I could go forward, I think I can probably demonstrate a
7 little bit better perhaps how the -- how we believe this
8 information will be relevant to the estimation.

9 THE COURT: Well --

10 MS. HARDING: And I'm happy to come back --

11 THE COURT: Tell me first, a) what you seek, and b)
12 why it should be coming from the lawyers? I mean, there are
13 all sorts of problems with attempting to send these
14 questionnaires to the lawyers without some formal discovery
15 process in place, and I'm not certain that I've heard anything
16 that convinces me that you don't have access to this
17 information elsewhere.

18 You know, if you've got specific B readers that you want
19 to challenge and they read the B reads do they keep copies? I
20 don't know. If they don't then do the asbestos Claimants have
21 them? And if they don't, do the hospitals and the doctors have
22 them, or you know, the tables that were set up in the back of
23 the room to take the reads? There must be a place where you
24 can get this without asking questions of the lawyer that may
25 impinge on their ability to represent their clients.

1 MS. HARDING: But, Your Honor, I think that you've
2 actually hit the very heart of why we need to get the
3 information from the lawyers, because the doctors have -- often
4 don't have the information. The Claimants often don't have the
5 information. Indeed, some of the law firms -- in other words,
6 we don't know what the relationships are. They've said -- most
7 of these -- the law firms that have objected have said, "We
8 don't file silica claims, all right." Well, how is it that the
9 Claimants that they represented in asbestos became silica
10 Claimants?

11 THE COURT: I don't know, ask their silica lawyers.

12 MS. HARDING: All right, we want to know that. I
13 think we're entitled to know did they send the B reads and the
14 x-rays --

15 THE COURT: Wait, wait. There is -- what difference
16 does it make whether in a different case some Claimant is
17 filing a fraudulent claim? The question is, are they filing a
18 correct claim in this case? And the fact that they behaved
19 badly in some other case, in the event that they testify or
20 something may be a credibility issue, but to the extent that a
21 B read is used in two different cases doesn't mean that it's
22 automatically unreliable in at least one of those cases.

23 Now, I understand that you've presented the studies before
24 that show that it's unlikely that a person who has asbestos --
25 an asbestos disease also has a silica disease if there's not a

1 mixed dust exposure at least. I understand all that. But the
2 question is, what you're trying to do now is seek evidence that
3 a potential Claimant in this case has also filed a silica
4 claim. So what?

5 MS. HARDING: But --

6 THE COURT: I mean, that's the problem of the Court
7 that's dealing with the silica claim, isn't it?

8 MS. HARDING: Your Honor, I understand precisely
9 where you're coming from, and I think I have literally the next
10 four or five slides to address that very issue.

11 THE COURT: Starting at what numbers?

12 MS. HARDING: Starting at #13.

13 THE COURT: All right.

14 MS. HARDING: Okay. This is just -- I mean, I think
15 the Court -- I wanted to give the Court some context as to why
16 Judge Jack was so incensed, okay, by what she saw --

17 THE COURT: Oh, I understand why Judge Jack is
18 incensed.

19 MS. HARDING: Okay.

20 THE COURT: She made it very evident in her opinion
21 why she was incensed.

22 MS. HARDING: If you look at this particular exhibit
23 you've got a diagnosis of a Claimant on one side, Barry Barret,
24 and there's no representation that this particular Claimant is
25 a Claimant in Grace. I don't know whether this person is or is

1 not. We've not identified him as a Claimant. It could be a
2 past Claimant, but he's certainly not a current Claimant, but
3 it's an --

4 THE COURT: Well, then, what's the relevance?

5 MS. HARDING: Because it's the -- because as getting
6 forward we have these very kinds of claims where the person was
7 diagnosed with an x-ray on 7/21 with asbestosis, and with the
8 same x-ray on the same day with silicosis by Dr. Harron, who's
9 filed thousands, thousands of claims against Grace. Current
10 claims and past claims by this doctor, and there's -- you know,
11 it is --

12 THE COURT: But the remedy for that --

13 MS. HARDING: -- staggering.

14 THE COURT: But the remedy for that may be to do
15 something like tell every Claimant that has been diagnosed by a
16 person who, for whatever reason, can be shown to have done
17 unreliable diagnoses to go get new ones. But why isn't that
18 Trust issue?

19 MS. HARDING: Because, Your Honor, the Trust is gonna
20 be -- is going to be formed and it's gonna be financed -- out
21 of the Debtor's Estate, and how much money goes into that Trust
22 is dependant upon what claims the Court finds to be valid and
23 reliable for estimation purposes current and future.

24 THE COURT: So you want to take a look at every what?
25 See, that's why I'm still losing it. We don't have any

1 Claimants here. So that -- how do you just go out to all of
2 the law firms and say, "For every one of your clients give me
3 this information," when they haven't filed claims?

4 MS. HARDING: Well --

5 THE COURT: The whole purpose of doing an estimation,
6 essentially, is so that you don't have to worry about people
7 filing claims, you put that work into the Trust after the case.

8 MS. HARDING: Right, Your Honor, but I think the
9 Court has made it clear from the beginning of the estimation
10 that the -- I think going back even to the statement the Court
11 made about the discovery to the Claimants, the Debtor has the
12 right to know what the current claims are, and that will be a
13 much better basis for estimation of current claims and possibly
14 future claims. And so --

15 THE COURT: That was the purpose for the 2019
16 statements, so you would know what attorneys are representing
17 clients who may submit claims.

18 MS. HARDING: Right, Your Honor. And as you know
19 that's been an issue we've got. And I'm gonna get to that
20 later on, but all -- many, many, 2019 statements are not filed,
21 and indeed --

22 THE COURT: Well, then they're not going to be voting
23 unless they get them filed so that you don't have to worry
24 about them, do you?

25 MS. HARDING: Well, and we've also -- I mean, I think

1 the Court has -- I don't know if the Court's seen or not but
2 the Debtors have filed a Motion Seeking a Proof of Claim Form
3 for the pre-petition Claimants, not to disallow claims, but
4 simply to -- so that the Court and the Debtors will know what
5 the pool of Claimants are that will be making claims against
6 the trust in the future so that we can make the estimation
7 valid. I mean, it doesn't -- if we don't know what the current
8 claims are how can we base an estimate in the future on them?

9 THE COURT: But if it's not for disallowance purposes
10 what hook do you have to get anybody to file it? You know, so
11 maybe people will file the claim, and maybe you'll get -- just
12 to pick a number, say you get 100,000, but you know from what
13 the attorneys are telling you that there are 200,000. So what
14 difference does getting a claim that isn't a mandatory Proof of
15 Claim form governed by the Rules for disallowance purposes
16 going to do you for estimation?

17 MS. HARDING: Well, Your Honor, the point that -- the
18 point of filing -- well, I don't know if we want to argue the
19 Proof of Claim form issue right now. The only reason I raised
20 it is because the Court asked about why are we looking at the
21 underlying claims? And as the Court also -- I think we've
22 mentioned in our brief, in the Federal Mogel estimation the
23 issue about these -- the invalidity and the unreliability of
24 the past claims was raised. There was -- the Court even
25 recognized that those issues were out there. But the Court

1 said that it didn't have a way of quantifying the affect of
2 that problem --

3 THE COURT: Right.

4 MS. HARDING: -- on the estimation. And our -- what
5 we're trying to do with this -- with getting this information
6 from the lawyers and from the Claimants is to give the Court
7 data and evidence to help quantify the affect and to provide a
8 basis for our experts to quantify that affect. And I think
9 we're entitled to get that information to make those arguments.

10 THE COURT: Well, the only way that I can see offhand
11 that that kind of information may be able to come in is to set
12 a claims bar date, and then you don't need to worry about
13 estimation any more because at that point in time you're going
14 to have actual claims filed and there will be a bar date. So
15 they'll either be allowed or disallowed. You'll have to go
16 through an allowance process, unless you want to estimate for
17 allowance.

18 MS. HARDING: But Your Honor, our -- the point from
19 the beginning has been with respect to estimation, that the
20 only evidence that the Court can consider in estimation is
21 evidence that meets the Federal Rules of Evidence Standards.
22 And so the evidence that comes in has to meet Daubert, and
23 that's what all of this is going to, is getting to the issue of
24 does their evidence meet the Daubert standard? Because if it
25 doesn't it doesn't come in, and the Court can't consider it for

1 estimation. I mean, that's been kind of the foundation for
2 this discovery.

3 But I would like to go forward because it gets to your
4 issue about why, you know, about the silicosis diagnosis and
5 the other proceedings and why is that relevant here. It's
6 relevant here because the lawyers, the lawyers in the silica
7 action, when Judge Jack asked them, you know, how could -- this
8 stretches credibility that they could have both, the lawyers
9 said in the silicosis action that it's the asbestosis diagnosis
10 that were wrong. All right? And then asked again, I know that
11 these -- the lawyer says, "I know that these Claimants have
12 Daubert proof silicosis claims." And Judge Jack said, "And
13 apparently they had Daubert proof asbestosis claims as well."
14 And the lawyer, Mr. Lemack said, "I doubt they had claims."
15 And she says, "Claims, or asbestosis?" And he says, "Both. I
16 doubt they had claims, and I doubt they had asbestosis."

17 And then, Your Honor, I think extremely important for kind
18 of the events of what has occurred is that the -- is that David
19 Ostern, who is the Future's Claimants representative in this
20 litigation, has filed a letter and suspended payment of
21 asbestos claims based on this same evidence. And --

22 THE COURT: But in his case it's probably relevant,
23 because his duty under the Trust, under the -- you're talking
24 about under the Manville Trust?

25 MS. HARDING: Yes, Ma'am.

1 THE COURT: Okay. Under the Manville Trust is to do
2 just that, to pay those claims. But we're not there yet.

3 MS. HARDING: We're not there, absolutely, and the
4 only reason we've even raised silica, Your Honor, is because we
5 think it lays the foundation for getting the information, for
6 getting the discovery. All we're asking for right now is the
7 information to be able to give to our experts to make the -- so
8 that they can evaluate it and consider it when they're making
9 their estimation.

10 THE COURT: I -- it seems to me that what is relevant
11 evidence, at least at a minimum in this case, is some proof
12 that there is a universe of personal injury Claimants with some
13 form of asbestos disease, and that they in fact will prosecute
14 a claim against Grace. Grace has a history of having dealt
15 pre-petition with huge numbers of Claimants who have filed
16 asbestos claims. Of all categories. You know, the asbestosis
17 right up through the mesophelioma claims. And Grace has paid
18 them in one capacity or another, or denied payment in one
19 capacity or another.

20 Surely Grace has the same type of evidence that you're
21 already trying to seek now from lawyers in your own files
22 because in order to pay those claims you had to meet either
23 your own company's standards, appropriate medical standards
24 under the State laws, and the insurer's concerns about
25 reimbursement to Grace when you made a claim. So you must have

1 exactly the same type of information in your files about past
2 claims that you're looking for for current claims. Why isn't
3 that relevant?

4 MS. HARDING: Your Honor, I think -- I mean, the
5 testimony from J. Hughes in a previous proceeding with respect
6 to that issue I think is very telling. And this is -- I mean,
7 everyone in asbestos litigation understands the pressure that
8 companies were under to settle these claims with less than
9 credible evidence, with evidence that they the insurers --

10 THE COURT: Well, pardon me. Not everyone in the
11 room understands that. There's one person sitting in the front
12 who doesn't understand that.

13 MS. HARDING: I apologize, Your Honor, but -- and
14 that -- and I understand that, Your Honor. I didn't mean to be
15 flip, but I was -- I'm trying to -- that is the evidence we're
16 trying to develop now, and as the Court has said --

17 THE COURT: But you have it, because if you paid them
18 on less than whatever competent evidence was before you still
19 have the evidence.

20 MS. HARDING: We have -- Your Honor, we have very
21 limited -- we have some B reads, we have the bare minimum of
22 what was required to settle the claim and to get it processed
23 so the company could try to stay afloat and deal with these
24 thousands, and thousands, and thousands of claims. We do not
25 have the kind of evidence that we're seeking here. And the

1 Court has said in the -- I think the Court has said on more
2 than one occasion, "I don't care what's happened in the past.
3 I'm dealing with these claims now. And what -- you know, what
4 is the -- what are the current claims? What is the evidence of
5 the current claims? And can it get in under the Federal Rules
6 of Evidence?" And that's the part that we're dealing with
7 right now. We're trying to demonstrate to the Court that that
8 evidence cannot pass Daubert, and I think that that's a
9 perfectly appropriate procedure for an estimation proceeding.

10 THE COURT: What's the cost of a B read, of getting
11 somebody in, you know, in a sort of consecutive person comes in
12 to get the x-rays and have the B read environment? What's the
13 cost per person of doing that?

14 MS. HARDING: Your Honor, I don't know. I suspect
15 there are some lawyers in the room that might know that that
16 have paid screening companies for many of them. I don't know.

17 THE COURT: Well, maybe it would be a better idea to
18 have everybody who wants to file a claim get a new x-ray and a
19 new B read.

20 MS. HARDING: Well, Your Honor --

21 THE COURT: And we'll appoint Court experts to read
22 them, and then you'll all be stuck with it.

23 MS. HARDING: Well, Your Honor, I don't know. I
24 would like to consult my clients on that, but it is something
25 --

1 THE COURT: Stuck with the Court expert, that is.

2 MS. HARDING: Right. It is something we've
3 considered, and we're perfectly willing to talk about it.
4 There are actually recommendations from various scientific
5 bodies about how to do that. The important part is that you
6 can't just have one person doing it. You have to have a panel,
7 and there are procedures for doing it, because the very
8 evidence itself -- that's the part that is so remarkable about
9 this, and why this has been able to occur.

10 The B reads, when it's a 1/0, the degree of variability
11 among experts in the field is huge. That's why all the other
12 diagnostic steps are so important before you diagnose somebody
13 with a potentially life-threatening disease. And so we are not
14 opposed to that, and we would be willing to talk about it.

15 THE COURT: Well, maybe that's the thing to do,
16 because to the extent that Claimants have claims in more than
17 one case it may eliminate the need to have this happen in more
18 than one case anyway. And then the issue can come down to
19 whose product caused the problem, or products, plural, caused
20 the problem.

21 What's the cost? You folks who do this work, somebody
22 give me an estimate of what the cost of doing massive, mass
23 scale B reads would be.

24 MR. LOCKWOOD: Your Honor, I have no idea. I mean, I
25 think it would be substantial for 118,000 people. Some -- the

1 ones that are dead can't do it. You'd have to agree between
2 the Debtor and the Plaintiff as to who the B reader, -- if
3 you're only talking about one. One of the things that happens
4 --

5 THE COURT: Oh, no, I think a good thing --

6 MR. LOCKWOOD: -- in the Court system is that the
7 Debtors hire B readers that are known to very seldom read
8 positive results, and the Plaintiffs find B readers that --
9 that's the way experts work.

10 THE COURT: That's why I'm saying I think what we can
11 do is you can hire your own and then we'll have some Court
12 experts who are answerable to the Court. Mr. Esserman?

13 MR. ESSERMAN: Your Honor, Sandy Esserman. Just to
14 try and answer the question. I have no first-hand knowledge of
15 this, but I was informed by one of the firms that I represent
16 that to get a new diagnosis for a Plaintiff can run between 500
17 and \$1000. That's what you're looking at, per person. Because
18 there has to be an individual evaluation, this is not a quick
19 process, and it's not necessarily cheap either.

20 THE COURT: So we're looking at a million -- roughly
21 anywhere between a million and two million dollars, which might
22 still save the trust a whole lot of money in the event that it
23 turns out that people are asymptomatic, and to the extent that
24 it turn us out that they're really seriously ill it's going to
25 cost the Debtor a lot, maybe in the long run --

1 MR. ESSERMAN: I'm not good at math, but I think it's
2 a 100,000 times 1,000.

3 THE COURT: Oh, 100,000, that's right, sorry.

4 MS. HARDING: Your Honor --

5 MR. ESSERMAN: It's between 50 and 100 million
6 dollars.

7 MS. HARDING: Your Honor, first of all, I'm fairly
8 certain that to get a B read is not 500 -- I actually know that
9 for a fact. I don't know exactly what it is. I would say to
10 get a B read it's substantially less. It's more like in the
11 \$100 range for the B read --

12 THE COURT: Well, I guess --

13 MS. HARDING: -- but I'm not advocating this right
14 now. It's just that I think that it's certainly something that
15 the Court should consider with the B reads.

16 MR. LOCKWOOD: Your Honor, before we get too much
17 farther on this, as the Debtor's papers made clear, they
18 believe that in order to have a valid claim you have to have
19 two independent B readers, you have to have pulmonary function
20 tests that comply with the standards that they prescribe, and
21 various other things. If the Court were to agree with that
22 then the Plaintiffs would have to go out and pay for all that
23 to be done.

24 THE COURT: They're going to have to pay to submit
25 evidence of their claims anyway.

1 MR. LOCKWOOD: Depending on what is required either
2 by the Court, if you're gonna go through a claims bar date for
3 purpose for 118,000 claims and make each person prove up their
4 claim individually, or in the Trust. The Trusts have their own
5 standards for what's required.

6 THE COURT: Well, let me interrupt for a second.
7 Because it seems to me that this issue is really going to come
8 down to probably the 1/0 B reads, and I guess -- I don't know
9 whether that's the largest quantity of them or not. I suspect
10 it probably is.

11 MS. HARDING: Absolutely.

12 THE COURT: But to the extent that there's been a
13 diagnosis of mesophelioma or lung cancer I don't know that you
14 need a B read at this point in time anyway. So the question
15 is, how many of these 100 plus, 1,000 claims are going to be
16 supported by that type of a B read diagnosis, and what would it
17 cost? Because in the long run it may still be cheap.

18 MS. HARDING: Your Honor, the -- slide 24 shows you
19 that over 120,000 of the claims -- there's 129,000 pre-petition
20 litigation claims. Approximately 95% of those claims are for
21 non-malignant or unknown claims. So you can see on the slide
22 there that there's about 1,500 mesophelioma claims, about 2,300
23 lung cancer claims, and approximately 700 other cancer claims.

24 So the non-malignant or unknown claims clearly make up
25 the, you know, large majority of the claims in the current data

1 base. I don't know, I can't tell you because we don't have
2 that information, so many of the claims are unknown, whether
3 the B readings are 1/0 or not. But our suspicion based on past
4 claims histories, and other bankruptcies, and other Defendants
5 is that a large portion of them are.

6 THE COURT: Well -- some of the B reader's
7 credibility has obviously been put at issue by Judge Jack's
8 opinion, but not everyone, and as a result I'm -- and I --
9 obviously I have no knowledge of any of these folks, so I only
10 know from reading the opinion that she was offended, I think is
11 a good word, by the use of some of the outcomes of some of the
12 B readers and the process that they had employed. But that
13 doesn't mean that every B reader in the world is behaving in a
14 fashion that was offensive to Judge Jack. So perhaps the first
15 question is, how many of the Plaintiffs in this case might have
16 evidence that is submitted by one of those B readers, and
17 whether or not the x-rays, which I take it are still available
18 if they've been read by the B readers, shouldn't be reread by
19 somebody everybody agrees to, or is a Court appointed expert,
20 and we don't need to go down any other path perhaps.

21 MS. HARDING: I can make a few representations about
22 that, Your Honor. We know that, for instance, at least four of
23 the B readers on the -- if you go back to the Manville letter,
24 there are -- I think there are eight, nine doctors identified
25 from the silica decision, and we know for certain that at least

1 four of those doctors have diagnosed thousands, and I'm
2 underestimating, I think, when I say thousands. I think I
3 could say tens of thousands with respect to past claims of
4 Grace Claimants.

5 With respect to the screening companies involved, again,
6 we know much less about the screening companies, because we
7 don't -- when Grace did settle claims they would get a B read.
8 They wouldn't necessarily get the information on the screening
9 companies, and the screen -- the relationship between the
10 screening companies and the law firms and how those screening
11 companies are used, how referrals to -- how screening companies
12 get paid more if they get a referral to a law firm for a
13 positive read, all of those things are information the Debtors
14 do not have and that bear directly on the reliability of the
15 evidence.

16 I can make the representation that NNM has diagnosed -- or
17 has screened thousands of Grace Claimants. That's the most I
18 can say. Importantly, I think from the information we have so
19 far with respect to the silica NBL Plaintiffs, we know that
20 nearly half have filed claims against Grace, either currently
21 or in the past. We know that in the Kaiser bankruptcy where a
22 bunch of silica claims apparently have just been filed or were
23 filed previously, two-thirds of those silica Claimants were
24 either -- are either currently or formerly Grace Claimants.

25 Now, I don't know -- today I don't know, we just got some

1 information. I don't know to the extent that there's overlap
2 between the silica MDL and the Kaiser MDL, but we know that the
3 doctors, the screening companies, and the Claimants that are
4 involved in the baseless practices that Judge Jack found are
5 involved in our claims to a large extent.

6 And you know, the last part of this presentation goes to
7 trying to explain to the Court why we do think it's important
8 to get this information from the lawyers. The lawyers are the
9 ones that have the information on the screening companies. The
10 screening companies are where this all starts. And you know,
11 it's really trying to get at the web of relationships and how
12 it ultimately impacts the diagnosis.

13 Again there's -- I think it's remarkable, there are 655
14 law firms that were -- that represent approximately 70% of
15 these unknown or non-malignant Claimants. And 8% of the law
16 firms -- 8% of the law firms, 52 law firms -- represent over
17 70% of those Claimants. And each and every one of those law
18 firms has represented Claimants against Grace that have also
19 been diagnosed with silica -- silicosis. And half of those law
20 firms -- half of the 52 haven't filed 2019s.

21 So, Your Honor, we are -- we know -- we believe finally
22 that the Court has the authority to issue the questionnaire.
23 We -- Grace -- the -- all of the objectors agree, we could do -
24 - we could do subpoenas for depositions. We could do subpoenas
25 to get documents. So we have the ability to get the

1 information and we would argue over privilege and things like
2 that. But the Court wouldn't be issuing some new substantive
3 right that the Debtors don't have the right to do. The
4 question is, what's the best method in an estimation? What's
5 the most efficient method in an estimation for getting out this
6 information?

7 And finally, the last thing I wanted to say, Your Honor,
8 is to the extent that there's any concern that their procedural
9 rights, the law firms' procedural rights won't be protected, I
10 circulated this time line last time. We've built in time for
11 objections to the -- we expect to get objections to the
12 questionnaire based on privilege and we can litigate those.
13 But we think this is the most efficient way to proceed to get
14 the information, but we're happy to listen to the Court's views
15 on how we should go about it.

16 THE COURT: Okay, does anyone want to be heard in
17 support of the Debtor's motion first?

18 ALL: (No verbal response).

19 THE COURT: All right, I'll take opponents, then. Mr.
20 Lockwood?

21 (Pause in proceedings)

22 MR. LOCKWOOD: As Your Honor heard just now, the vast
23 amount of the argument on this attorney questionnaire has to do
24 with the inferences that the Debtor would like this Court to
25 draw from what's gone on in front of Judge Jack in the silica

1 case, and I think Your Honor early on indicated that that's a
2 different case and what went on there doesn't necessarily have
3 any real bearing on what's going on here. And I agree with
4 that, obviously. But I think it's important, given some of the
5 arguments that Ms. Harding has made here today, to focus on at
6 least some of the differences because they really do undermine
7 some of the premises that the Debtor is using this for.

8 One, the constant repetition of the fact that there are, I
9 {quote} "retreads" that have occurred here. One really ought
10 to focus on the term retread and think a little bit about what
11 it means. What it means is that once upon a time somebody
12 filed an asbestos claim and had a diagnosis of an asbestos-
13 related disease. And in many instances, as some of the
14 individual firm filings that we've seen here, Grace actually
15 settled those asbestos claims using whatever kind of diligence
16 it chose to employ in evaluating the identity of the B reader,
17 the quality of the B read, the quality of any other evidence
18 that was done. Indeed some of the cases were settled after
19 trial and verdict. But the important thing to know is that
20 almost -- is that not almost -- by definition what has happened
21 is some lawyers have submitted subsequently to these asbestos
22 claims, silica claims to some other set of Defendants. And
23 some of those -- many, indeed, apparently, of the 10,000 or so
24 that were coordinated before Judge Jack for pre-trial purposes,
25 were people who had previously been diagnosed with asbestos-

1 related disease. And Judge Jack, among other things, noted
2 that unlike asbestos, silica diseases had pretty much begun to
3 disappear in this country over the preceding 20 years and that
4 the normal expectation was you would see very few of 'em. And
5 that therefore this was an incredible anomaly here.

6 In contrast, you know, they're simply -- there's -- you
7 can dispute about whether or not there should be a decline
8 curve about asbestos-related diseases and when it should begin,
9 but there's absolutely nothing that Grace or any other
10 Defendant has ever indicated that would suggest that you would
11 have such a dramatic decrease of -- in the asbestos --
12 incidence of asbestos disease.

13 So that essentially what Judge Jack found was that, you
14 know, whether she's right or wrong about it, that there were
15 lawyers who had decided to try and double dip on asbestos and
16 silica. Now that gave her a basis for evaluating and having
17 discovery aimed at the doctors, not the lawyers. The doctors
18 who had furnished these B reads. Well, that gets us to stage 2
19 of what's going on in silica.

20 A B read may or may not be the -- a something that
21 somebody uses to go to trial in. Frequently, B reads -- and
22 this is where the screening companies come in -- there's a
23 stage to -- a process to which these claims have historically
24 gone in the tort system prior to the bankruptcy of Grace and
25 others. Which is -- the first thing is, the Claimant has to in

1 some manner or another become aware that he may have a claim.
2 That's where the screening companies have come in as we've seen
3 the literature and the Court decisions. They go around. Some
4 of 'em are legitimate. Judge Jack even admitted in her opinion
5 that screening for diseases is not intrinsically illegitimate.
6 Some of 'em were sponsored by unions for their members that
7 have worked in industrial things. Others were, to use one of
8 Mr. Bernick's favorite phrases, entrepreneurial efforts
9 sponsored by lawyers apparently.

10 But again, what the result of that would be, would be that
11 a Claimant and a lawyer somehow or another would get together
12 based on this reading and decide that the Claimant had a claim.
13 However, that was just the first stage. Now, the -- depending
14 upon what an individual Defendant's practice was, you could
15 very possibly settle claims that weren't even filed in the tort
16 system. Some Defendants had what were called processing
17 agreements whereby lawyers with large numbers -- usually with
18 large numbers of cases would have an agreement that would set
19 forth certain requirements negotiated between that lawyer and
20 the Defendant over, you know, the submission outside of a Court
21 of claims with certain prerequisites for product identification
22 in terms of exposure and medical evidence of the existence of a
23 disease. And those claims would be processed. And some would
24 be rejected. And some would be accepted and none of that would
25 ever see the light of day in a Courtroom. And more importantly

1 none of them would ever be subjected to the frequently invoked
2 Federal Rules of Evidence and Daubert because that was a
3 consensual process that was being worked on out of Court.

4 Then there you have another large category of claims which
5 were filed in a Court. Now, again, Defendants at that point
6 had two choices. They could settle early and cheaply. And one
7 of the things that we're gonna be focusing on as these
8 estimation procedures go on is how much cheaper it was to
9 settle a case, sort of at the inception of it, than it was to
10 settle it on the Courthouse steps before a trial, during trial,
11 after trial, et cetera. But again, if you settled it pre-
12 trial, before you had any substantial discovery, and before you
13 were required to designate your experts, and before those
14 experts could be subjected to Daubert Motions based on whatever
15 expert testimony they proposed to give, you would resolve cases
16 under whatever criteria the Debtor and its insurers regarded as
17 acceptable for settling cases and utilizing whatever
18 evidentiary submissions, including B reads, from the Plaintiffs
19 that justified those settlements.

20 Then you would have cases that would go to trial. And you
21 would have -- some of those would be subjected to Motions for
22 Summary Judgment in advance of 'em, and it's at that stage that
23 you have -- the Daubert issue comes up. Because most cases --
24 most Courts have Case Management Orders that require you to
25 identify your experts and frequently Judges will allow people

1 to make Motions in Limine -- Defendants -- if they think the
2 expert testimony that's going to be proffered pursuant to a
3 Case Management Order identification process at trial doesn't
4 measure up.

5 And that's where Judge Jack was. Judge Jack said that she
6 had set pre-trial proceedings for these 10,000 cases and that
7 she had required the trial lawyers to identify their trial
8 experts. And those trial lawyers said, according to Judge
9 Jack, these are our experts and these are the diagnoses that
10 they will be proffering in the trial. Now I should say by the
11 way that I got a call from one of the lawyers in that trial who
12 said that our papers had inaccurately described those as trial
13 experts because it -- they really hadn't gotten to that stage
14 yet. All I can say about that is I have to take what Judge
15 Jack says in her opinion at face value 'cause she's the Judge
16 and she said they were trial experts. And that's presumably
17 the only reason that she was able to apply Daubert to these
18 doctors' diagnoses because Daubert under the Federal Rules of
19 Evidence, as the Debtors have to concede, is a rule that tells
20 you what kind of expert evidence you put in a trial. It isn't
21 a rule that tells you what kind of expert evidence you have to
22 have for you and your lawyer to file a lawsuit. And -- or to
23 file a claim in a Bankruptcy Court.

24 And one of the things that I wanted to focus on in this
25 connection was the discussion that we had earlier here about

1 possibly having a new B read and all this. If we are going to
2 have a claim allowance procedure for 118,000 claims, then after
3 the Debtors object to those of the 118,000 claims that they
4 believe should be not allowed, we will have under Rule 9014 an
5 adversary process commence at which case every one of those
6 Claimants will have the right to proceed forward. And at some
7 point in that process, pursuant to Orders that this Court will
8 presumably present an Order, there will be a requirement that
9 the Plaintiff identify his expert for the trial of that case.
10 And at that point, either at the trial itself or through
11 possibly a Summary Judgment form of Motion in Limine type
12 practice, the Debtors will have an opportunity to challenge
13 those designated experts.

14 I rather suspect that if that process occurs, no matter
15 whose B reads may have originally prompted the filing of a
16 claim against Grace, we will not see Dr. Harron proffered as
17 the trial expert for these asbestos Claimants. There's no
18 requirement that just because somebody got a B read from Dr.
19 Harron, you know, a few years back, even if it was pursuant to
20 some screening process, that somehow or another that Plaintiff
21 is locked in by that fact to the selection of Dr. Harron or Dr.
22 Oaks or any one of the other doctors that Judge -- I mean Judge
23 Jack criticized in the silica case.

24 And so, to some extent this is a gigantic red herring
25 here. Because this is -- all this stuff about B readers and

1 everything is aimed at focusing on a stage in the process where
2 sort of the claim is sort of being originated by the Plaintiff
3 and his lawyer and not being focused on the process of where
4 the claim was actually going to be to tried. Which is the only
5 time that this Court under the Federal Rules of Evidence and
6 the Supreme Court's decision in Daubert would have the ability
7 to apply a Daubert standard.

8 Now, what is it that the Debtors want to do here with
9 these attorney questionnaires? Essentially what they want to
10 do is go out and show that many of these B readers are biased.
11 And therefore their B reads should be rendered sufficiently
12 incredible that they should be rejected out of hand. Remember,
13 this -- the Court has already imposed -- over our continuing
14 objection, I should confess -- a requirement that individual
15 Claimants file 118,000 questionnaires. And those
16 questionnaires are gonna have to contain -- because they
17 require it -- the identification of the diagnosing doctor in
18 the B reader.

19 THE COURT: Right.

20 MR. LOCKWOOD: So -- and --

21 THE COURT: Which is why I don't know why you need to
22 get it from the lawyers.

23 MR. LOCKWOOD: I'm -- you won't get any push back from
24 me on that point, Your Honor. But so what is it that the
25 attorney questionnaire is going to add to that process? Well,

1 they say, the attorney questionnaire is gonna enable them to
2 determine the direct or indirect financial relationship --
3 those are their words -- that's what the questionnaire is.
4 Direct or indirect financial relationship between the lawyers,
5 screening companies, and doctors. And okay, let's -- put aside
6 for the moment at least, the incredible vagueness of what on
7 earth you mean by a direct or indirect financial relationship
8 between a doctor and a lawyer. And I might add, they also want
9 it between law firms. Apparently, they're interested in
10 finding out every law firm's referral arrangements with other
11 law firms, and whatever that has to do with the validity of the
12 underlying claim is not immediately apparent to me. And has
13 never been explained by the Debtor. But let's assume they
14 establish through these questionnaires that, gee, Dr. Harron
15 got --

16 THE COURT: Mr. Lockwood, let me stop you. Oh. I
17 just got a yellow screen. I was -- oh, it's happening again.
18 Now it's red. All right. When my screen turns colors, I get
19 frightened because it's usually the blue screen of death. This
20 one is the red and yellow screen of something.

21 MR. LOCKWOOD: Is it functioning now, Your Honor? I
22 mean --

23 THE COURT: I don't know and I'm afraid to find out.

24 MR. LOCKWOOD: Should I hold off?

25 THE COURT: Wait. Yes, just wait, please. It's

1 vivid.

2 MR. LOCKWOOD: I hope that's not an editorial
3 comment by the computer manufacturer on my argument, Your
4 Honor.

5 THE COURT: Cable? Whoa. Yes. I have text. And my
6 cursor's flashing. So I should be all right? I can trust you
7 on this, right?

8 (Laughter)

9 THE COURT: It flashed yellow and then green. Yes,
10 and then yellow and then red. Why don't you just take a couple
11 seconds recess? I'm really -- I mean, I would like to continue
12 but I'm afraid. I really don't want to lose everything that
13 we've done so far. Okay. Thank you. I have no idea.

14 (Court in recess)

15 THE COURT: Okay, thank you. Right, we're ready. I
16 killed the monitor. It just went, that was it. You're not
17 going to let me come back to Delaware anymore. Three months in
18 a row, three hurricanes and three computers dead. So, okay.
19 Mr. Lockwood, I'm sorry. You were at -- they want to see how
20 one law firm refers clients to another and that has never been
21 explained as to how it relates to the testimony that they're
22 seeking to induce.

23 MR. LOCKWOOD: Right. We were focusing, Your Honor,
24 on the actual questionnaire itself, which is Exhibit-A to the
25 Motion of the Debtors. And just to back up again, it seeks the

1 --

2 THE COURT: Oh --

3 MR. LOCKWOOD: -- details --

4 THE COURT: Mr. Lockwood. I'm sorry. It's typing --
5 all the letters are typing over each other. I'm going to get
6 some paper and we'll start taking notes by hand while they fix
7 this. But --

8 (Pause in proceedings)

9 THE COURT: Okay. Mr. Lockwood, I'm sorry. We'll try
10 it one more time. Third time's a charm, otherwise I'll go back
11 to the old fashioned way. Okay. Exhibit-A.

12 MR. LOCKWOOD: Exhibit-A. The critical language that
13 we start from here is, "Does your firm, a member of your firm,
14 or an employee of your firm have a past or current, direct or
15 indirect financial relationship with any of the following --
16 check all that apply." Then they list other law firms that
17 represent asbestos claimants, doctors who diagnose asbestos-
18 related disease, doctors or technicians who perform chest x-
19 rays, B readers, doctors or technicians who perform PFTs, et
20 cetera, et cetera.

21 And then for each of those entities that you've checked
22 the box on page 1, there's a second page that requires you to
23 answer something like seven questions. And then identify and
24 produce all documents relating to -- describing the
25 relationship. These relations -- first, the term direct and

1 indirect financial relationship as I was in the process of
2 saying, it's just -- I mean, it's completely vague. I mean, do
3 I have a direct or indirect financial relationship if I paid an
4 expert witness fee to a doctor? If I've -- a member of the
5 same investment club and we pay dues, invest together? If I
6 were part of a mutually supported club of some sort where we're
7 sharing expenses in something?

8 I mean, what is an indirect financial relationship? If I
9 have a fee-sharing agreement on a couple of cases with law firm
10 X and law firm X has paid Dr. Y an expert witness fee, does
11 that -- an indirect financial relationship through the other
12 law firm? I mean, with all candor, Your Honor, I wouldn't know
13 how -- I wouldn't know what I was being asked to respond to if
14 I got this questionnaire. The vagueness and the breadth of it.

15 Secondly, these questions are asked for sort of any
16 relationship with anybody that fits in the described category
17 as long as they have something to do -- well, the first two of
18 'em have to have something to do with asbestos. The rest of
19 'em are doctors or technicians who perform x-rays, or read x-
20 rays or something. But essentially there's no nexus at all
21 between the questionnaire -- the individual questionnaire of
22 the Claimant whose claim is before you, and the relationship
23 that you're being asked to describe. This isn't sort of a
24 followup, if you will, of a questionnaire. It's a wholly
25 independent, self-generated category of information.

1 Then let's assume you get the information. And you --
2 okay, the expert witness fees or I -- I'm a law firm and
3 somehow or another I paid the screening company to go out and
4 give x-rays to people and see if they had asbestos diseases.
5 Let's focus on the screening -- they said there's basically
6 three problems. Law firms, doctors, screening companies.
7 Let's focus on screening companies for the moment, because as
8 Your Honor pointed out earlier, the existence of screening
9 companies in this business has been known for at least 10
10 years. I mean, it was a function -- it was -- the Owens-
11 Corning in 1996, sued three screening companies in -- I believe
12 it was Alabama. And Your Honor's heard about that in the
13 Owens-Corning case. So this is not like something new that
14 Grace somehow or another just kind of discovered because Judge
15 Jack brought it to their attention.

16 What happens? Let's assume some lawyer pays the screening
17 company to screen people. So what? Does that make the result
18 of the screening invalid? Remember, why are we here? What is
19 Grace saying they want to do? They're saying, "Judge, we need
20 this evidence to help us establish the validity or invalidity
21 of claims." Well, now how -- we're either doing an aggregate
22 estimation, which is what I always thought we were doing, or
23 we're doing individual claims allowance. I'm totally at a loss
24 to know what the inference would be in the aggregate estimation
25 context of the fact that some lawyers paid screening companies

1 other than to suggest that they're out there trying to find
2 people with asbestos-related diseases. And -- but in the
3 individual claim area, since the screening company doesn't
4 testify, they're not a witness in support of the Plaintiff's
5 claim, that the fact that the claim was generated by a
6 screening conceivably might be used as evidence of -- I don't
7 know, maybe bias? You ask the doctor, did you know that this
8 person was identified through a screening process where the
9 lawyer paid money to the screening company? I mean, maybe they
10 could use that. I'm not even sure they could, frankly. It
11 seems kind of tenuous.

12 But at the end of the day, that would be an individual
13 case involving the individual claim of that person. And at a
14 minimum, I'm not aware of any law or principle that would allow
15 some expert to come in here and say, "Judge, you know, we just
16 -- looked at all these questionnaires and, boy, there's a bunch
17 of these law firms that have a lot of claims that paid
18 screening companies money and a lot of the claims we infer or
19 maybe we'll do more discovery of the screening companies to
20 really find out, but really, we infer that because the claims
21 originated through screenings, they are ipso facto invalid." I
22 mean, that's not -- that's not expert testimony. That's just,
23 you know, ranks sort of -- basically you're saying that somehow
24 or another you don't like the process. You think it's unseemly
25 or whatever, I --

1 THE COURT: But, look -- I think we're getting far
2 afield because I'm still not clear what they want to -- what
3 evidence it is that is really supposed to be relevant to this
4 issue. And I really need to have some argument, I think, from
5 the Movant as to what specific evidence is relevant. Because,
6 I'm not seeing it except for the fact that if there is a
7 challenge to the B reads themselves -- the x-rays themselves,
8 and the Debtors want to take a look at that evidence, it seems
9 to me that in challenging whether a person has an actual claim
10 of the type they allege here, that the -- whoever wants to in
11 quotes "object" to that claim would have access to that
12 information.

13 The problem I still have is that information is going to
14 be handled according to the Debtor's proposed Plan through a
15 Trust, not by the Debtors. So for estimation purposes it may
16 be relevant to have -- some in global terms -- evidence that
17 particular B readers submitted X numbers of claims. And I
18 guess then there has to be some follow-up evidence if that's a
19 relevant point which is that in fact those claims are -- or
20 those B reads are not correct. But the -- all of it, it seems
21 to me, comes down to getting the x-rays and having the Debtor
22 have their own people -- if that's what they want to do -- look
23 at the x-rays to determine whether or not in their opinion the
24 B read that was submitted is correct. Because that's the
25 evidence that we have to get to.

1 MR. LOCKWOOD: Your Honor, let me --

2 THE COURT: If we're going down that road --

3 MR. LOCKWOOD: The questionnaires -- which Your Honor
4 has authorized to be sent out have lines in there saying --

5 THE COURT: The Plaintiff questionnaires, yes.

6 MR. LOCKWOOD: -- who's -- the individual
7 questionnaires. They identify the B readers. The Debtors
8 already think they know who the bad B readers are. There's
9 nothing to prevent them from making the same kind of arguments
10 citing Judge Jack, and newspaper articles, and Wall Street
11 Journal editorials, and heaven knows whatever source of public
12 relations material they are fond of relying on in their briefs
13 in support of their arguments about that. But if they want to
14 get into individual x-rays, then what we're going to be
15 involved in is individual claims allowance.

16 THE COURT: That's --

17 MR. LOCKWOOD: And I mean, I thought Your Honor had
18 made perfectly clear that that's not what we're gonna do here.
19 I realize the Debtors have from time to time said, "Well, if we
20 don't get to do estimation the way we want to do estimation" --
21 however that is -- "we will fall back and set a bar date and
22 we'll go through an allowance process." All I can say to Your
23 Honor is, to go through an allowance process for 118,000
24 personal injury claims when people have rights to trial by jury
25 and to be heard those claims -- have those claims heard in a

1 District Court --

2 THE COURT: The District Court will be thrilled.

3 MR. LOCKWOOD: Well, while this isn't a 502(c)
4 estimation, it certainly won't advance -- the actual allowance
5 will certainly delay the process of getting this Debtor out of
6 bankruptcy for your and my remaining life spans. Fortunately
7 yours is probably longer than mine, but it'll easily cover both
8 of us. And so I just -- to me that's empty rhetoric,
9 threatening a bar date unless this Debtor really thinks they
10 can wear down everybody in the Courtroom and eventually some --
11 go away and leave 'em alone.

12 THE COURT: Well, okay. The point is still, I do not
13 see how this request is calculated to lead to relevant and
14 admissible evidence with respect to an overall estimation. And
15 although I asked you to comment, Mr. Lockwood, I'm going to ask
16 if I could turn back to the Debtors to see. Because maybe if I
17 start from the fundamental principles, I'll understand it a
18 little better. Because I don't see it.

19 MS. HARDING: Your Honor, could -- permit me to go to
20 the board here and make a --

21 THE COURT: Sure, and #1, why is it something that
22 can't wait until you find out who the B readers are from the
23 individual claims that are coming in? I mean, why do we need
24 to go the next step --

25 MS. HARDING: Your Honor, I think the main reason why

1 we can't wait to do it is because we don't have enough time.

2 THE COURT: Oh, look --

3 MS. HARDING: I mean --

4 THE COURT: How old is this case? Pardon me. This
5 case has been around for almost a third of my tenure on the
6 bench. We have plenty of time.

7 MS. HARDING: Well -- but Your Honor, we have -- we've
8 got a trial date set for September. We've got expert reports
9 due in January. We've got our other expert reports due in
10 March --

11 THE COURT: And if we can't meet those deadlines, then
12 we can't meet the deadlines. The question still is, what more
13 information you need and why. If you're going to get the B
14 readers and you've got some thing that leads you to be
15 suspicious of those B readers, once you know who they are,
16 you'll have the information that you will need to take it to
17 the next step, whatever that next step is.

18 MS. HARDING: I understand, and with respect to the B
19 reads we can get to that. But I want to start with the issue
20 of exactly what is -- what do we want from the questionnaires
21 that we can't get from the Plaintiff questionnaires? I'm going
22 to give you a couple of -- Your Honor, first of all, Mr.
23 Lockwood said if they pay -- if a screening company -- if a law
24 firm pays a screening company for a B read, there's nothing
25 wrong with that. Your Honor, what if the law firm pays the

1 screening company zero for a screen that's negative and zero
2 for a screen that's positive but the law firm doesn't get the
3 referral?

4 THE COURT: The way you file that -- find that
5 information out, if you suspect that that's the case -- #1, I
6 think Mr. Lockwood's right. That may be reprehensible in some
7 fashion or other, but the question still is, is the screen that
8 led to the x-ray that led to the read correct or not correct?
9 And whether the screening company, you know, read more at -- or
10 sent more for readings to the B readers than otherwise they
11 would have done, isn't relevant. The question is, you know --
12 and plus, the Debtors have this information for the last 20
13 years while it's been settling asbestos claims. So this isn't
14 something new. If it was a problem before, why did the Debtor
15 either settle or pay claims?

16 MS. HARDING: Your Honor, I think it's inaccurate to
17 suggest that the Debtor had all this information. The Debtor
18 had suspicions about a lot of things. And the problem was that
19 -- and I mean, we've talked about this in the Court before, I
20 know Mr. Burnick has -- the Debtors are in essence held hostage
21 if they try to push this issue in one Court, they were held to
22 huge settlement demands in other Courts. And I mean that --

23 THE COURT: Then you file bankruptcy and you're held
24 to one huge demand by one Judge and here you are. I still
25 don't get it. I understand if you're going to get the B

1 readers, you can go take their depositions, you can ask
2 witnesses. You know, the individual Plaintiffs if need be.
3 How they got to that specific B read if they know. But why do
4 you need this information from the law firms? I'm certainly
5 not going to give you proprietary -- access to proprietary
6 information of the firms. You're not going to get that. Not
7 from this Court. I don't see any relevance to whether or not a
8 specific x-ray B read and/or the Debtor's ability to estimate
9 claims -- how in any way that is dependent on whether or not
10 one law firm member is a social club member of a doctor in a
11 case.

12 MS. HARDING: And Your Honor, and let me be very
13 clear. I'm happy to try to narrow the focus of the
14 questionnaire. One, if we could narrow it directly to Grace
15 Claimants. In other words, relationships with doctors --

16 THE COURT: Wait. We had this --

17 MS. HARDING: -- related to Grace Claimants.

18 THE COURT: We had this very discussion in dealing
19 with the individual witness questionnaires. And the Debtor has
20 gone back and done exactly the same thing in the lawyer
21 questionnaire that I already said you couldn't do in the
22 individual questionnaires. I mean, I confess I don't have a
23 good long-term memory but I do remember from month to month
24 what I've ruled --

25 MS. HARDING: But, Your Honor, and actually I have the

1 record from that discussion with -- between you and Mr.
2 Burnick. And the precise discussion was that we sought the
3 information, we explained why we thought the information was
4 relevant, and Your Honor said it may be that the Claimant won't
5 know. So we can't ask it here. That was --

6 THE COURT: Of the relationship between the law firm
7 and the doctors?

8 MS. HARDING: Right. Exactly. That was the issue.
9 And so that is why we filed the motion --

10 THE COURT: But --

11 MS. HARDING: -- because we want to get the
12 information and we --

13 THE COURT: But the question still is, what's the
14 relevance? What I said was, it may be. I don't see the
15 relevance. Now you've put it in a motion. I have it in front
16 of me. You're still telling me that what you want to do is
17 challenge the B reads. So challenge the B reads. But you
18 can't do it in a fashion that's not calculated to lead to
19 relevant and admissible evidence. And I don't see how this is.

20 MS. HARDING: Your Honor, it's not just the B reads.
21 And I think I -- with all due respect I do think it is relevant
22 to -- and calculated to lead to discovery -- discoverable
23 information. I'm trying to find, Your Honor, I can't get the
24 screen up. But there is a slide from David Ostern's letter,
25 Your Honor. It's slide #18.

1 THE COURT: Okay.

2 MS. HARDING: If you take a quick look at that.

3 THE COURT: All right.

4 MS. HARDING: All right, these are the doctors and
5 screening companies that were identified in the silica
6 litigation. And that now are no longer receiving the Trust --
7 the Manville Trust is no longer paying claims supported by
8 these doctors. All right?

9 THE COURT: So what?

10 MS. HARDING: And these screening companies. Your
11 Honor, the information we're seeking in here is trying to get
12 at what other doctors and what other screening companies should
13 be on this list? And that is absolutely --

14 THE COURT: None of these doctors are on a list in
15 this case. Let's get something clear --

16 MS. HARDING: Well --

17 THE COURT: These doctors may be challenged in some
18 other fashion in some other way. Right now, I don't have any
19 evidence that these doctors even have submitted claims or that
20 individuals of these doctors will be submitting claims. You're
21 going to get that information from the Plaintiff's
22 questionnaires. When you get it, if you've got some reason to
23 challenge the reliability of the diagnosis, then you can take
24 it to the next step. But you don't need to ask lawyers what's
25 your financial relationship indirect or direct with, for

1 example, just to pick a name -- Dr. James Ballard.

2 MS. HARDING: But, Your Honor. I think it's --
3 absolutely goes to the reliability of that evidence under
4 Daubert --

5 THE COURT: All right. I've overruled it. You're not
6 getting that. So what's next?

7 MS. HARDING: With respect to?

8 THE COURT: What you need. What you're asking for and
9 what the relevance is.

10 MS. HARDING: Your Honor, we're asking for -- I'd like
11 -- I'll go through a series of questions I think that they were
12 trying to get at -- the information we're trying to get at, all
13 right? "Did you have a relationship with a doctor or a
14 screening company where the compensation of the doctors or
15 technicians who examined your clients varied depending on
16 whether the opinion or diagnosis rendered supported a claim for
17 an asbestos-related disease?" That absolutely is relevant to
18 the reliability of those claims. If a doctor's getting paid if
19 it's positive and not paid if it's negative, that goes to the
20 reliability of that underlying evidence. And that -- the
21 Claimant will not know that.

22 THE COURT: Well, the Claimant may or may not know
23 that, but I think likely the Claimant probably would not know
24 that. But then you could take the depositions of the doctors.
25 Because they're the ones who got paid and gave the diagnosis.

1 And it's their testimony you're trying to challenge. You can't
2 use the Collateral Evidence Doctrine to get through the back
3 door what you can't get through the front door.

4 MS. HARDING: Your Honor, I hesitate to raise this
5 now, but as the Court is well aware, the doctors stopped
6 testifying in the silica case.

7 THE COURT: Well, then -- this isn't the silica case.
8 I --

9 MS. HARDING: Well, I understand, Your Honor. They're
10 also under a grand jury investigation and Congressional
11 investigation.

12 THE COURT: Then they'll take the Fifth Amendment and
13 you'll have adverse inferences that you can draw if it's
14 appropriate. And so might the other side if it's appropriate.

15 MS. HARDING: I mean, other information that we
16 think's highly relevant to the reliability of the underlying
17 evidence under Daubert. Did another law firm --

18 THE COURT: Wait. Wait. What -- maybe we have a
19 difference of opinion about what Daubert talks about. Daubert
20 talks about the methodology by which an expert has rendered an
21 opinion and whether that methodology has met the test, in
22 essence, of reliability. Whether it's subject to peer review,
23 whether it's been published and all the other forms that you go
24 through for reliability. That's what it says. It doesn't say
25 that you strike the doctor's testimony because the doctor may

1 be biased.

2 MS. HARDING: But you --

3 THE COURT: That's an evidentiary principle that
4 doesn't get to the methodology, the reasonableness and the
5 reliance of the methodology used in an expert in Daubert.

6 MS. HARDING: Well, but, Your Honor -- this -- I
7 believe there's absolutely a reliability factor involved but
8 there's also the issue of the involvement of the law firms in
9 the diagnostic process. That's what we're trying to get at. I
10 mean, how -- to what extent --

11 THE COURT: The -- let's just assume without deciding
12 for the moment that the lawyer paid either a screening company,
13 or a B reader, or a doctor, or maybe in the given case, all
14 three, in order to get a report. Is there something unusual
15 about a lawyer -- a law firm paying for an expert report?

16 MS. HARDING: It -- Your Honor, I think it absolutely
17 would be -- would not be acceptable medical practice to get
18 payment for -- only for those people for whom you diagnose as
19 positive?

20 THE COURT: That --

21 MS. HARDING: And not to take payment for people you
22 don't --

23 THE COURT: I don't know --

24 MS. HARDING: -- you don't diagnose as positive?

25 THE COURT: I know a lot of tax accountants who take a

1 look at a person's income and say, gee, you've only earned
2 \$10,000 this year. I'll do this one for free.

3 MS. HARDING: But, Your Honor --

4 THE COURT: But then they look at somebody else who's
5 made a million dollars and say, I'm going to charge you a
6 thousand dollars for this return. Is that inappropriate? Of
7 course not.

8 MS. HARDING: In the medical practice -- and I think
9 we're entitled to get the evidence so that our experts can
10 testify whether that is acceptable medical practice for
11 diagnostic purposes. I mean that's -- we're just trying to get
12 information --

13 THE COURT: You can ask the doctors --

14 MS. HARDING: -- that our experts can review.

15 THE COURT: You may ask the doctors.

16 MS. HARDING: And if we can't get the information from
17 the doctors, Your Honor --

18 THE COURT: Then I'll deal with it then.

19 MS. HARDING: -- can we come back?

20 THE COURT: You'll have to come back if --

21 MS. HARDING: Other information we're looking for.

22 "Did you have relationships with" -- I'm sorry -- "with other
23 law firms that handled the screening of the client and the --
24 and shopped the B read around to the point where you got a
25 positive diagnosis and then now the new law firm files the

1 claim?"

2 THE COURT: So what you're saying is, was there more
3 than one B read? One was negative and one was positive and
4 you're only giving us the positive?

5 MS. HARDING: Absolutely.

6 THE COURT: Why aren't you going to --

7 MS. HARDING: Because another law firm --

8 THE COURT: -- get --

9 MS. HARDING: -- handled the screening.

10 THE COURT: Why aren't you going to get that from the
11 individual Plaintiffs who are required to tell you --

12 MS. HARDING: Because the law --

13 THE COURT: -- the doctors and the B reads that they
14 had?

15 MS. HARDING: Sorry, Your Honor. Because the law firm
16 that files the claim doesn't have that information. They don't
17 know --

18 THE COURT: But the individual does.

19 MS. HARDING: -- the information. Pardon me?

20 THE COURT: But the individual does.

21 MS. HARDING: No, the individual doesn't. They don't
22 know where their x-ray's been sent. That's the whole point.
23 They get shopped around -- the individual has no idea where
24 their x-ray was sent.

25 THE COURT: So you want a very specifically narrowed

1 question, which is have you with respect to -- let me just say,
2 Plaintiff A --

3 MS. HARDING: Right.

4 THE COURT: -- for a moment. With respect to
5 Plaintiff A, have you taken this B read and given it to more
6 than one doctor or B reader and as a result of that gotten
7 inconsistent B reads?

8 MS. HARDING: That is one question, Your Honor. That
9 is one part of it. But the second part of it that gets to the
10 issue of the relationships between the law firms is did you get
11 this claim from another law firm? Okay, what is your
12 relationship with other law firms because the record seems to
13 suggest that there are law firms that do the screening, shop
14 the B read 'til they get a positive and then that group of
15 claims then goes to another law firm. That law firm files the
16 claim and these guys get some --

17 THE COURT: Look --

18 MS. HARDING: -- kind of payment for it. That's
19 relevant --

20 THE COURT: -- I don't --

21 MS. HARDING: -- to the reliability of the underlying
22 -- and to the method of the diagnosis.

23 THE COURT: No.

24 MR. LOCKWOOD: Your Honor, I object to that statement.
25 I'm sorry. I've sat here and listened to Ms. Harding make

1 representations. There's not one word in any of the pleadings
2 that Grace has filed in this case and newspaper articles and
3 other inadmissible sources included that suggests that the
4 problem of shopping B reads arises not when a single firm might
5 shop a B reader out on multiple doctors, but when they're in
6 effect laundering the shopping by having one firm do the
7 shopping and then in order to somehow or another make it clean,
8 you pass the claim to another law firm. That -- there's just --
9 -- she just made that up as far as this record is concerned.

10 THE COURT: I --

11 MS. HARDING: I'm searching --

12 THE COURT: Whether made up or not, this is going far
13 afield of what an estimation hearing's all about.

14 MS. HARDING: Your Honor, the only thing we're asking
15 for here is the right to take the discovery -- is to issue the
16 questionnaire and to -- and the law firms that get the
17 questionnaire --

18 THE COURT: I'm not permitting the questionnaire. If
19 -- #1, if you want evidence from a specific firm, then you do
20 the formal discovery according to the Rules of Evidence,
21 because I believe that there are constitutional problems with
22 what you're asking. That without consent of their clients the
23 lawyers may in fact be compromising some piece of advice that
24 they have given to a client for what reason. There may be
25 attorney-client privilege. There may be work product. There

1 could be all sorts of problems. There are definitely with
2 respect to the financial relationships and how firms transfer
3 clients or share clients among one another, proprietary
4 information involved. There are all sorts of problems with
5 this questionnaire. So, I'm not going to approve it.

6 If you've got need for specific discovery, focused on a
7 specific area, you can take it and we'll deal with it
8 piecemeal. But overall, I am not going to permit these broad-
9 based questions. I didn't permit them with the individuals.
10 I'm not going to permit them with the lawyers. If you try in
11 discovery I'm going to permit it, so please -- although I'm not
12 giving you advisory opinions, I'm giving you advice. I'm not
13 going to permit it.

14 So tailor your questions if you have some need to this
15 specific whatever it is that you're looking for so that when I
16 say, what's the relevance, you can tell me how it fits to a
17 particular strategy, theory, piece of evidence, whatever in the
18 estimation hearing, because this doesn't. This is not
19 enhancing that process.

20 MS. HARDING: Can I try one more time?

21 THE COURT: One more.

22 MS. HARDING: Your Honor, in the end, and so I don't -
23 - so we're going to have a Trust, all right? And then the
24 trust is going to be funded, all right, from an estimation from
25 this Court on what should -- how much money should go into the

1 Trust.

2 THE COURT: Right.

3 MS. HARDING: All right. And the first part of the
4 estimation that the Court is talking about, in the past, at
5 least, is what our -- what's the basic liability for the
6 current claims?

7 THE COURT: Right.

8 MS. HARDING: Okay. And our position has been all
9 along from the very beginning, and I think the Court has at
10 least acknowledged that the Debtors have the right to assert
11 this position, that the funding for the current plan has to be
12 supported by evidence admissible in Federal Court. And all of
13 the discovery that's been going on is trying to get at the
14 issue of what evidence is admissible and meets the Daubert
15 standards under the Federal Rules. And so that -- all the
16 discovery is tailored and is then intended to get at that
17 issue. And we believe that experts -- very highly credible and
18 distinguished experts will tell this Court that the diagnoses
19 based on the kind of practices that occurred and were found in
20 silica are not reliable. Their methods would never be
21 acceptable in --

22 THE COURT: Please don't mention silica anymore. This
23 isn't a silica case. I'm not -- if you try to introduce what
24 they did in the silica case, I'm telling you right now, it's
25 not relevant to what I'm doing. I don't want to hear anymore

1 about silica.

2 MS. HARDING: All right. The point I want to make on
3 it -- in doing that, we believe that in the same way, in some
4 respects that you're handling in -- that there will be certain
5 filters that will filter out the roots of these claims. And it
6 will provide -- and the evidence we're seeking now is the data
7 to help the experts quantify those numbers.

8 THE COURT: That's what you told me you were seeking
9 when I permitted the individual claim questionnaires to go out.

10 MS. HARDING: Right. And at that time, Your Honor, we
11 -- I think we've been clear all along that we think that we can
12 do so much with those questionnaires and that evidence. But we
13 also think that we can get further evidence that those claims
14 should be filtered out even more based on these kinds of
15 practice and relationships. And that's what it's going to
16 because then that also debates the current and future claims
17 are going to be estimated and we know from the Ostern letter.
18 We know from the -- that the kinds of practices that were
19 acceptable in the past are no longer acceptable. And even if
20 it weren't an issue with the current claims, with respect to
21 future claims the Court is entitled to know what part of those
22 current claims are going to meet those standards in the future.

23 THE COURT: I do not want to see improper claims
24 filed or allowed -- if they are filed, allowed. I don't want
25 to see a single dime go to a Plaintiff who doesn't have a

1 legitimate claim against this Estate. However, you've got to
2 substantiate that the discovery that you're trying to get to is
3 going to enhance either -- that determination one way or the
4 other. That is, what claims are legitimate and what claims are
5 not legitimate for allowance and payment purposes. This
6 evidence about relationships between the law firms is too
7 tangential. It's not calculated to lead to that kind of
8 evidence.

9 The Plaintiff's questionnaires I think are calculated in
10 that fashion. You're going to get a description of the
11 doctors, the B readers, who the lawyers were -- all sorts of
12 things. When that evidence comes in and your experts have a
13 chance to look at whatever they're going to do with that
14 evidence, and they say to you, we can't do -- we can't give you
15 an opinion because we need this piece of evidence, then you
16 come back and say, my experts say they need this piece of
17 evidence or we can't get any decision from them, any opinion
18 from them. And then I'll understand what the relevance is.
19 But until you get through the process that's currently on track
20 and your experts look at it, and decide that they can't in fact
21 get you an opinion, I don't see the relevance of doing more.
22 The whole purpose for going through that exercise for several
23 hours was to make sure that you got relevant evidence that was
24 what your experts needed.

25 MS. HARDING: Absolutely, Your Honor. I mean, I

1 understand where the Court's coming from. We will tailor any
2 specific direct questions we have with respect to law firms in
3 that regard. Thank you, Your Honor.

4 THE COURT: All right. If no one else wants to be
5 heard, I'm going to do an Order that denies --

6 (Laughter)

7 MR. ESSERMAN: Your Honor, I've always been told that
8 after you've won a motion, make sure you charge the podium to
9 see if you can reverse the Judge's mind. So I'm not going to
10 make the presentation that I was scheduled to make but in
11 particular, one of the respondents had something further that
12 might require an evidentiary presentation, and we'll therefore
13 request pursuant to your procedures a hearing, probably in
14 Pittsburgh, at a later date.

15 THE COURT: Okay. What is -- what's the nature of an
16 evidentiary presentation?

17 MR. ESSERMAN: Well, we believe -- the Reaud Morgan &
18 Quinn firm believes that upon presentation of evidence we will
19 be able to show you that this Motion was completely based on
20 evidence that does not exist, that was made up as to the firm,
21 as to Reaud Morgan & Quinn firm. And that has no basis in fact
22 or law. That that was pointed out to the Debtors, that we were
23 asked to be removed from this motion, and we were cited in a
24 motion that used some very harsh terminology such as fraudulent
25 medical evidence, junk asbestos claims, bogus claims,

1 questionable attorney practices. And they cited two cases of
2 Reaud Morgan & Quinn, both of which have been accepted by
3 Grace. We attached the medical evidence to our response. The
4 doctor we used was a defense doctor. And we --

5 THE COURT: Let me stop you, Mr. Esserman, because --
6 I'm denying the motion, so I'm not having an evidentiary
7 hearing on this motion. If you've got some further motion to
8 bring, you file it. And if we need an evidentiary --

9 MR. ESSERMAN: There's part of it --

10 THE COURT: -- hearing, I'll hear it.

11 MR. ESSERMAN: It was part of sanctions.

12 THE COURT: Well, the sanction -- I think the
13 sanctions issues have to be brought separately under Rule --
14 are you talking about a 9020 sanction?

15 MR. ESSERMAN: Yes.

16 THE COURT: Well, you'll have to bring -- you'll have
17 to comply with that. I'm not setting up an evidentiary hearing
18 in response to a motion.

19 MR. ESSERMAN: Thank you, Your Honor.

20 THE COURT: Okay.

21 MS. HARDING: Your Honor, may I respond just briefly?

22 THE COURT: No. Actually, no.

23 MS. HARDING: All right.

24 THE COURT: We're done.

25 MS. BAER: Your Honor, I see that it's past 2 o'clock.

1 We have three matters left on your calendar, and I wanted to
2 take up maybe logically which way we should take them in order.
3 One matter we have, matter #12 is the matter with respect to
4 the 2019 statements. Your rulings last week -- last month and
5 the inability, as you may not be terribly surprised, of the
6 Debtor, the insurers and the futures rep to come to an
7 understanding with respect to an Order.

8 The second issue that's still pending before you on the
9 calendar is matter #13, which is the Motion of Reaud Morgan &
10 Quinn -- Mr. Esserman's clients -- to modify the Case
11 Management Order with respect to PI estimation.

12 The third matter that's up, Your Honor, is status, as you
13 asked for us to put on the calendar, of the ZAI rulings. In
14 light of the time, Your Honor, I'd ask for guidance -- it seems
15 to me logical that we take up the matter of the PI Case
16 Management Order as that is governing the way we proceed and we
17 should get some clarification right away if there's going to be
18 any changes whatsoever.

19 THE COURT: All right. With respect to the ZAI
20 rulings, I had asked to put that on so that I hopefully would
21 get the opinion done by this month. I'm not close. I am
22 working my way through all 14 volumes of evidence, and I am
23 simply not close to an opinion. However, in the process of
24 looking at some of that evidence, I had an idea that I wanted
25 to raise off the record, not as part of the rulings, because

1 what I was thinking about would have absolutely no bearing on
2 the ultimate issue. So it does not have to be done today. I
3 think it would be appropriate to perhaps set a telephone
4 conference only with counsel -- all parties, whoever counsel --
5 because it's simply something that I wanted to run up as a
6 trial balloon to see whether I could get you folks talking
7 again.

8 MS. BAER: Whatever you'd like, Your Honor. We'd be
9 happy to participate.

10 THE COURT: All right. So maybe if you can work with
11 ZAI representatives -- attorney representatives then -- and
12 call my office in Pittsburgh, perhaps we can schedule a
13 telephone conference call. I don't think it will take more
14 than -- well, I'd say 15 minutes except that there are so many
15 people. Let's say half an hour.

16 MS. BAER: Your Honor, I'll -- I will talk with Mr.
17 Westbrook and others and we will give your clerk a call in
18 terms of the timing.

19 THE COURT: All right. And that's all I wanted to say
20 about ZAI.

21 MS. BAER: So, Your Honor, that leaves the two
22 remaining matters which are the PI Case Management Order and
23 the insurance matter.

24 THE COURT: All right. That's fine. If you want to
25 do the Case Management Order fine that's -- first, that's fine.

1 MS. BAER: Thank you, Your Honor.

2 MR. ESSERMAN: I assume that's my motion, Your Honor,
3 and just so the record's clear, did I understand you were gonna
4 do an Order yourself on the attorney questionnaire?

5 THE COURT: No, I expect the parties will simply give
6 me an Order on a Certificate of Counsel that denies it without
7 prejudice to --

8 MR. ESSERMAN: Okay.

9 THE COURT: -- you know, asking the information in
10 some other fashion as appropriate.

11 MR. ESSERMAN: Thank you. Your Honor, I will now
12 proceed on -- on the other motion, which is Motion for
13 Clarification or Alternatively, Modification of the Case
14 Management Order. Reaud, Morgan, & Quinn received 26 boxes of
15 questionnaires and the first response would be, so what? Maybe
16 they've got that many Claimants, but -- but I think the factual
17 scenario that they present is quite different and it was not
18 one intended to be covered by the attorney questionnaire.

19 Reaud, Morgan & Quinn mostly represents vast, vast, vast
20 majority of settled claims. These claims have been settled
21 pursuant to written Settlement Agreements, signed by the
22 parties, in which we've actually had some arguments before Your
23 Honor. I know Your Honor's had so much, but we've had
24 arguments and we've got another litigation involving some of
25 this for two firms, Environmental Litigation Group and Reaud,

1 Morgan & Quinn.

2 In those questionnaires, it set forth what was required by
3 Reaud, Morgan & Quinn and Environmental Litigation Group to
4 prove a claim, what they had to show, and that was all
5 submitted medical, exposure evidence, all submitted to Grace
6 and it remains in their Palm Beach facility. And pursuant to
7 that settlement, Grace agreed to pay Reaud, Morgan & Quinn 21.6
8 million and Environmental Litigation 59.9 million.

9 Now, that, in and of itself, is not all of the facts. Out
10 of those monies, Reaud, Morgan & Quinn is only owed 2.5 million
11 and Environmental Litigation Group 11 million. These are all
12 approximate numbers. And the claims have all been analyzed by
13 Grace and accepted by Grace, including some back and forth
14 regarding various claims, which were either good or not.

15 So they've got all of the data that is required under the
16 written Settlement Agreement in their own warehouse, and,
17 furthermore, they have the releases. They have releases of
18 claims all from these clients. And the question exists, why in
19 the world would they need to fill out an attorney
20 questionnaire?

21 In addition, payment of these amounts due and owing is
22 secured by a bond, by an AIG National Union Bond, a payment
23 bond. So we've got a written Settlement Agreement, analysis of
24 claims, medical submissions, and evidentiary exposure
25 submissions to Grace, reviewed by Grace's senior asbestos

1 counsel, and approved by Grace. Actually approved by Grace and
2 payment, in large part, made by Grace.

3 So what kind of response are we getting to this? Well, we
4 need the information as part of estimation. Well, these claims
5 have been estimated. They've been estimated. Grace has set
6 forth specifically what they needed in these particular claims
7 estimated and they've accepted it or not.

8 In addition, well, we need to know the size of the Trust.
9 All through there is we've got to know the size of the Trust.
10 Well, I've looked at their -- I looked at their Plan and I was
11 surprised in one way and not surprised in another claim. These
12 aren't even Trust claims. These are unsecured claims, by
13 definition, in Grace's own Plan, these claims do not go to the
14 Trust. They get paid 85 percent in cash, 15 percent in stock,
15 and that also assumes that the bond isn't paid. Well, the last
16 time I checked AIG was pretty solvent, and we think that that
17 bond is going to be good.

18 So there's a real questions as to whether or not Grace is
19 ever going to see these claims as a result of Reaud, Morgan &
20 Quinn, but certainly under their Plan, the Trust will never see
21 these claims, because Grace is committed to pay them in cash.

22 THE COURT: Well, then I -- if they're committed to be
23 paid in cash and not part of the claim, I don't know why
24 they're part of the estimation.

25 MR. ESSERMAN: Well, in --

1 THE COURT: The numbers are -- you're saying that the
2 numbers of fixed.

3 MR. ESSERMAN: Yes. In agreed amounts set by Grace
4 and agreed to Grace after review of whatever evidence the
5 parties had agreed to.

6 THE COURT: So Grace could make whatever use they
7 choose --

8 MR. ESSERMAN: Absolutely. They've got a warehouse
9 full of stuff on 10,000 claims.

10 THE COURT: I don't --I don't know --

11 MR. ESSERMAN: And why should we have to fill out 26
12 boxes of questionnaires on these claims, when we've already
13 submitted all of this stuff to Grace? It makes no sense to me,
14 but I could not get any relief other than having to make this
15 motion before the Court.

16 THE COURT: Okay.

17 MS. HARDING: Your Honor, I don't think we're that far
18 apart on this issue. Our question is in which of the Reud,
19 Morgan & Quinn Claimants are going to be filing claims against
20 the Trust? That's what we want to know.

21 THE COURT: Well, they can't --

22 MS. HARDING: And --

23 THE COURT: -- if they've settled and you're not
24 putting them into the Trust.

25 MS. HARDING: Well, but the problem is that there are

1 three categories. I think we agree on this. There's three
2 categories of Claimants. There are clients who have settled
3 claims that have not been paid. There are Reaud, Morgan &
4 Quinn clients who have settled and have partial payment and
5 then there are Reaud, Morgan & Quinn clients that have settled
6 and have been partially paid, and then there's a bond.

7 And the -- from our records and our database, we don't --
8 we can't -- any Claimant in our database that has been fully
9 paid, it doesn't appear as open claim and didn't get a
10 questionnaire. But any Claimant that hasn't been fully paid,
11 is an unresolved claim, and the -- the questionnaire was issued
12 to all Claimants of unresolved claims.

13 And this particular issue came up in the -- during the
14 discussion about the Claimant questionnaire and there was a
15 specific discussion about. I think it was Mr. Finch that
16 raised the issue. We've got settled claims. People have this
17 information and our point was that it's not the same
18 information that's requested in the questionnaire, first of
19 all. And that's --

20 THE COURT: But it's never going to go into the
21 estimation process because you've already got it settled. The
22 only thing you can put into the estimation is your Settlement
23 Agreement, isn't it?

24 MS. HARDING: Well, Your Honor, that's what -- there's
25 -- I don't know if that's true or not. In other words, we said

1 are you going to -- are you not going to file a claim against
2 the Trust and they wouldn't agree to give us the names of the
3 people that were not going to be filing against the Trust.

4 THE COURT: How can they file a claim against the
5 Trust if you don't put them in as known claims to be paid
6 through the Trust? If you've separately categorized them,
7 assuming that this Plan is confirmed, and you've separately
8 classified them in another claim because they're the equivalent
9 of a contract Claimants with unpaid claims, how can they make a
10 claim against the Trust? They've settled.

11 MS. HARDING: Your Honor, the only thing I can say is
12 it was my understanding that that was not the way the Plan was
13 set up and so I can't -- so that it was our assumption in this
14 -- in this agreement, this part of it, that these claims would
15 be paid by the Trust in some form or another and, for that
16 reason, had to be part of the estimation.

17 THE COURT: Well --

18 MS. HARDING: I agree that if they're not part of the
19 estimation, they should not have to fill out the questionnaire.

20 THE COURT: Well, if they're going to be paid by the
21 Trust, but they've been settled, then the only claim they have
22 is the settlement claim. So in any -- no matter how you look
23 at it, they don't go back to square one if they've already
24 issued releases and -- and especially if they're secured claims
25 by a bond.

1 MS. HARDING: But, Your Honor, it's -- somebody
2 correct me if I'm wrong, but I think it's true that there's no
3 -- there's certainly no guarantee that that will happen in the
4 Trust or maybe there is. I don't know, but I don't believe you
5 can predict that now.

6 THE COURT: Well, what will happen in the Trust?

7 MS. HARDING: That those claims will be paid at that
8 amount. I just don't know if there's a procedure for
9 guaranteeing --

10 THE COURT: But they can't --

11 MS. HARDING: -- that.

12 THE COURT: -- file a claim that they don't have and
13 if they've settled, isn't that their claim? So you already
14 know the numbers. I mean, you can add -- you can make use of
15 the numbers in your estimation procedure because there's a
16 settlement.

17 MS. HARDING: Well, Your Honor, I don't -- I
18 completely agree that if they're not going to be part of the
19 estimation, then -- they shouldn't answer the questionnaire,
20 but I will say this with respect to claims that are going to be
21 paid by the Trust. Any claims paid by the Trust, what we're
22 trying to do with the questionnaire, and I think the Court has
23 agreed that the Debtors' have the right to do it, is we're
24 trying to take a universe of claims, okay, so that the Court
25 and the Debtors, and the other parties can try to determine

1 what would be an adequate funding for the Trust. Okay?

2 And in that mix of current Claimants there are various
3 stages of claims. There are claims that are completely open.
4 There are claims that have reached some level of settlement,
5 but the the Debtors have taken the position that we don't just
6 want to have a sample of the claims for the estimation. We
7 want to have information on all of the claims and these are
8 still -- they're not fully resolved and so, to that extent, I
9 think that the information that is in addition to the
10 information that they would have given us in the Settlement
11 Agreement, I've got a slide, Your Honor. If you'll see there's
12 a significant amount of information that wasn't called for
13 under their Settlement Agreements. Information about previous
14 or subsequent diagnosis or diagnostic tests.

15 THE COURT: But you can't get into that. You've
16 settled.

17 MS. HARDING: But it's still relevant, Your Honor, to
18 the estimation of the future claims.

19 THE COURT: No, it's -- how is it relevant? You've
20 settled. You've already looked at those claims and accepted
21 the information. You've already got it. The Claimants don't
22 have to reproduce something they've already given you.

23 MS. HARDING: I'm sorry for interrupting, Your Honor.
24 For the precise reason that it's the Plaintiff's Committee that
25 wants to use settlement history as being the valid and most

1 reliable evidence about what the reliable claims are.

2 THE COURT: Well, for settled claims that are in the
3 process of being paid, especially when they're secured by a
4 bond, that's pretty darn good evidence.

5 MS. HARDING: No, no. I don't disagree, Your Honor.
6 I'm talking about the use of the current claims for the
7 prediction of future claims. It is very relevant evidence to
8 know that for these claims that were settled in the past that
9 those claims, lo and behold, are part of the kinds of claims
10 that we will, and our experts will, I believe, give the opinion
11 will not be paid in the future. So you've got to know what
12 percentage of the settled claims are like that.

13 THE COURT: You've already got all of that information
14 in your database. You've got everything you asked for from the
15 Claimants in order to settle and you've got releases. I don't
16 see how, at this stage of the game, the Debtor has any standing
17 to request additional information from settled claims as to
18 which you've got releases, because they can't possibly file
19 anything against the Debtor, except for the unpaid portion of
20 their settlement.

21 MS. HARDING: Your Honor, with respect to -- as long
22 as we're calling those claims fully resolved, then it meets the
23 --

24 THE COURT: No, they're --

25 MS. HARDING: -- definition of the questionnaire, but

1 that's the -- that was the issue that was left open, I think.

2 THE COURT: Well, the claim itself is apparently
3 resolved. The payment of the claim isn't.

4 MS. HARDING: Right. And that's the part that goes
5 into the Trust.

6 THE COURT: Apparently not under the Plan. Plus, to
7 the extent there's a bond out there, it's not going to go into
8 the Trust because it has a separate asset that can be reached.

9 MS. HARDING: Your Honor, part of the --

10 MR. LOCKWOOD: Your Honor, even if it goes into the
11 Trust, if it's resolved, it goes into the Trust, as Your Honor
12 said, as a -- at the settled amount. Okay? Unless there --
13 the Debtor want to repudiate and have the legal capacity to
14 repudiate the settled, but not fully paid claims, this is all
15 fantasy. I mean, the number that goes in, as Your Honor
16 pointed out, to the estimation, even if it goes to the Trust,
17 it would be the dollars obtained by adding up the settlement
18 amounts and those will be what are called pre-petition
19 liquidated claims.

20 MS. HARDING: But, Your Honor, how -- what I propose
21 is what if we -- can we put this over to the next hearing? We
22 will investigate, with respect to the Plan, whether these
23 claims are treated as claims that get paid by the Trust or not
24 under the Plan, and then proceed --

25 MR. ESSERMAN: It doesn't matter whether it's paid by

1 the Trust or not and I don't want to put it off. I want -- a
2 ruling from the Court up or down or whatever because this seems
3 to me to be perfectly clear, and we're just going to get a
4 bunch mysto magic from the Debtor.

5 They would like the Trust to have to pay this. Their Plan
6 is currently structured, which they haven't read and haven't
7 gone through the analysis with regard to these claims, doesn't
8 provide, and I've got the references right here. But that's
9 almost irrelevant.

10 The point is these are settled claims, secured by a bond,
11 with evidence and releases in the possession of the Debtor.

12 THE COURT: If the Debtor already has releases, the
13 only obligation appears to be to pay the unsettled portion,
14 however you're going to do that through the Plan, but if it --
15 if it's paid through the Plan, then the only amount that's
16 going to go into the Plan is the -- into the Trust, pardon me,
17 is the unpaid portion of the settlement amount anyway.

18 MS. HARDING: But, Your Honor, the only thing I'd ask
19 for right is just -- it's not even three weeks away, Your
20 Honor. To give us time to go back to the Plan, to look at how
21 they're treated, and then because, Your Honor, this impacts not
22 just -- in other words, this is the extreme of the issue, but
23 then the question becomes what do we do with respect to other
24 claims that are in various stages of settlement? And I think
25 we should -- before we make a --

1 THE COURT: Well, I'm not -- I'm not prepared at this
2 point to talk about claims that are in other stages of
3 settlement. I do think this. If the information has already
4 been given to the Debtors, then all the Claimant ought to have
5 to do is say we gave you this by cover letter dated X or
6 whatever it is that is going to be the relevant information,
7 and they shouldn't have to reproduce what they've already given
8 the Debtor.

9 MS. HARDING: Your Honor --

10 THE COURT: But with respect to claims that are fully
11 settled, where the Debtor has already done its administrative
12 process, agreed to a number, and accepted a release, I don't --
13 see any --

14 MR. LOCKWOOD: Your Honor, that's why the committee
15 supports Your Honor ruling today. They're -- these
16 questionnaires are out to hundreds of law firms. Reaud, Morgan
17 brought their motion with respect to some claims that were
18 uniquely settled because they had bonds and stuff, but there's
19 plenty of other people who have fully settled claims. They're
20 not paid.

21 We keep hearing this notion that somehow or another if you
22 haven't been paid, the claim is not, {quote) "fully resolved."
23 I don't know what fully resolved means in that sense, but it
24 seems to me, and the Committee, as Ms. Harding pointed out
25 through referring to a conversation with my partner, Mr. Finch,

1 takes the position that if Grace has agreed with you in a
2 binding settlement on -- binding on both parties to pay you X
3 dollars, and has received a release from you, that you don't
4 have the right to go back and ask that person for the kinds of
5 medical information that --

6 THE COURT: I agree.

7 MR. LOCKWOOD: -- Grace might have, had they thought
8 about it, asked for before they settled it.

9 THE COURT: Well, I agree.

10 MR. LOCKWOOD: And so we would like a ruling on this,
11 Your Honor.

12 THE COURT: To the extent that there is a fully
13 resolved claim; that is, that the Debtor has admitted the
14 liability, and the damages have been fixed, and all that
15 remains is payment on that damage claim, then whether it's paid
16 through the Trust or not, there is nothing more that the Debtor
17 needs to know because the Debtor already has decided what the
18 value of that claim is pursuant to the Settlement Agreement.

19 MR. LOCKWOOD: And as for the Debtor's need to take
20 account of these claims in its estimates of future liability,
21 I'm sure the Debtor's skilled experts that we constantly hear
22 references to --

23 THE COURT: Okay.

24 MR. LOCKWOOD: -- will be able to figure that out,
25 Your Honor.

1 THE COURT: All right.

2 MS. HARDING: Your Honor --

3 THE COURT: It's getting late and I'm tired, so
4 please. Let's keep the vituperative comments to a minimum.
5 I'm having enough trouble getting to the relevance of the
6 arguments.

7 MR. ESSERMAN: Thank you, Your Honor.

8 THE COURT: I will -- Mr. Esserman, I don't think I
9 have the Orders here. Would you submit one, a Certification of
10 Counsel?

11 MR. ESSERMAN: I will, Your Honor. Thank you.

12 MS. HARDING: Your Honor, could I just ask? We just,
13 I mean, have three weeks to come back and to make sure that
14 we're clear about what groups of claims are not going to be
15 included in the estimation because that's highly relevant to
16 how the estimation gets done.

17 THE COURT: The issue for me today isn't whether
18 they're in the estimation or out of the estimation. The issue
19 is do the claims -- do the plaintiffs who have fully settled
20 their claims with Grace, to the point where they have given
21 releases, but have not been paid in full, have to complete
22 these questionnaires? And my answer to that is no. They
23 don't. Grace already has the information because it's already
24 agreed to settled, so it's acknowledged either maybe in a
25 settlement document and it's the settlement without

1 acknowledging liability. I don't know what those settlements
2 may say, but it has acknowledged that, for whatever reason,
3 it's going to pay a claim at X dollar level, and that's all for
4 actual claims amounts that Grace needs to know.

5 MS. HARDING: Your Honor, I understand the Court's
6 position and the part that I want clarification on is the part
7 that -- in other words, it's relevant to the universe of
8 current claims that will form the basis for the estimation. We
9 just want to make --

10 THE COURT: And you know the amount.

11 MS. HARDING: Pardon me?

12 THE COURT: And you know the amount.

13 MS. HARDING: And we know the amount.

14 THE COURT: Okay.

15 MS. HARDING: The appropriate amount, not based on
16 past settled claims, but based -- and if the Court was looking
17 to the current claims to make a determination of funding of the
18 Trust for the current claims, and then, more importantly, using
19 that base --

20 THE COURT: Well, there has never been a Trust that
21 I've seen yet that hasn't taken into account what the Debtor's
22 settlement history is, even the Debtor wants to consider the
23 settlement history because you're not going to litigate every
24 claim. You don't litigate every claim in the bankruptcy
25 context. You're certainly not going to come in here and tell

1 me that you're going to litigate every asbestos claim.

2 MS. HARDING: No, Your Honor.

3 THE COURT: Okay.

4 MS. HARDING: That's the point of it is is that with
5 respect to the settlement history and the percent of valid
6 claims, the percent of claims that will be paid in the future -
7 -

8 THE COURT: You already know that these are valid
9 claims because you've accepted them, you've settled them, and
10 you've priced them.

11 MS. HARDING: It -- perhaps, Your Honor, that is
12 absolutely not the Debtor's position that they were -- that
13 we've paid them and settled them because they were valid
14 claims. And that's the important -- that's the important
15 distinction.

16 THE COURT: You can't have it both ways. On the one
17 hand, you can't accept a release by these Claimants so that
18 you're relationship with them has come to an end, and that they
19 have taken themselves out of the tort system; and, therefore,
20 had an opportunity to prove that their claim's worth a whole
21 lot more than you're paying or you to succeed in defending
22 against this, that it's worth a whole lot less.

23 MS. HARDING: But, Your Honor, the point is that
24 they've not taken themselves out of the tort system. I think
25 as far as our records indicate, they have over 3,000 open

1 claims and the question goes to what --

2 THE COURT: Settled claims are open claims?

3 MS. HARDING: They have more -- those are not all of
4 the claims.

5 THE COURT: Well, I'm not talking about the ones that
6 aren't settled.

7 MS. HARDING: But, no, no, but --

8 MR. ESSERMAN: Your Honor, we're just talking about
9 the settled claims --

10 THE COURT: Right.

11 MR. ESSERMAN: -- subject to the agreements. This is
12 over.

13 MS. HARDING: But the --

14 MR. ESSERMAN: I mean --

15 MS. HARDING: -- question goes to whether that --
16 what's the best evidence for how to value the open claims?

17 THE COURT: The settlement. No, the question is not
18 on the open claims. To the open claims, Mr. Esserman, you have
19 to fill out the questionnaires.

20 MR. ESSERMAN: We're not asking for anything on the
21 open claims.

22 THE COURT: Fine. On the open claims --

23 MR. ESSERMAN: It's the settled claims.

24 THE COURT: -- they need to submit it. On the settled
25 claims, that's the best evidence you're going to get because

1 it's your agreement.

2 MR. ESSERMAN: And we do have an Order, Your Honor.

3 THE COURT: All right. I'll take it. Thank you. Oh,
4 I'm not going to have attorney's fees and costs paid.

5 (Laughter)

6 MR. ESSERMAN: I had to ask, Your Honor.

7 THE COURT: I have modified this to strike Paragraph
8 2, and then I've signed the Order.

9 MR. ESSERMAN: Thank you, Your Honor.

10 MS. BAER: Your Honor, I think that takes us back to
11 agenda item # 12, which was the insurers' Motion for Leave from
12 Your Honor's Order to get information from the 2019 statements.

13 THE COURT: Okay.

14 MS. BAER: As you may recall, Your Honor, the Debtor
15 did not oppose that motion. In fact, we supported the
16 insurers' getting that information. The hearing took a little
17 bit different turn and the ultimate outcome of the hearing,
18 Your Honor, was that you ordered the insurers, the Debtors, and
19 the others to try to negotiate an order reflecting what your
20 ruling was.

21 Your Honor, the insurers circulated an order last week
22 that was wholly unacceptable to the Debtors. The Debtors got
23 in contact with the future claims representative who also
24 believed the order was wholly unacceptable. The future claims
25 representative circulated his own order to the insurers, which

1 was a lot closer to what your rulings were, although we had one
2 open issue with it.

3 At this point in time, nobody has an agreement, Your
4 Honor, but in going back to your transcript, I think what you
5 ruled was actually relatively simple. The problem is the
6 insurers are not comfortable with just what you've ruled. They
7 want to also indicate in your Order what it means and that's
8 where the Debtor gets very troubled.

9 And, Your Honor, I think you made a couple of relatively
10 simple points. Number one, you denied without prejudice the
11 right to the 2019 information. Again, the Debtors did not
12 oppose it and still do not oppose their participation in the
13 estimation process. If we are going to not revisit that issue,
14 but go forward from what you had previously said, where they
15 did not need to participate in 20 -- in the estimation process.

16 Then you went further beyond that to try to clarify
17 exactly what the personal injury claims estimation proceeding
18 is supposed to be. And you made it very clear, as to the
19 Debtors, that is for the purpose of estimating claims for
20 purposes of funding the Plan and that's it. It is not
21 insurance coverage litigation.

22 The third thing Your Honor ordered and found was that by
23 the insurers not participating in the estimation, that will not
24 be held against them in any other proceedings. We have no
25 problem with that.

1 The fourth thing, Your Honor, is, I believe, you addressed
2 the issue of standing and you said the insurers did not have
3 standing to participate in the estimation process.

4 All of that is fine. That is essentially what the futures
5 rep has put in his draft order, but for one issue. The
6 insurers, on the other hand, apparently are not content with
7 that Order, want a lot more than that and that is where we
8 whole heartedly disagree, Your Honor, and believe we should go
9 with a simple, straight forward ruling, which is what you had
10 made. I don't know, Your Honor, if you've seen any of the
11 orders.

12 THE COURT: No, I haven't.

13 MS. BAER: And I am happy to, if Your Honor would
14 like, give you all of the Orders. In fact, the Debtors also
15 drafted one, or take it any way in which it works out best for
16 you.

17 MS. WARREN: Your Honor, may I be heard?

18 THE COURT: Yes.

19 MS. WARREN: Mary Warren for the London Market. Your
20 Honor, first of all, the insurers did submit a proposed Order
21 for your hearing binder and we were told by the Debtors that,
22 in fact, it was in your hearing binder.

23 THE COURT: It may be. It's just that with respect to
24 this specific hearing, I was not anticipating taking a look at
25 that today, and I just didn't do it, so I can't say that it's

1 not there. I just haven't looked at it.

2 MS. WARREN: All right. Well, understood. Well, let
3 me then go over with you, Your Honor --

4 THE COURT: Right.

5 MS. WARREN: -- why we think this is a fair Order.
6 And I'm happy -- I have an extra copy I can hand up to you.

7 THE COURT: All right. That would be fine. I'm
8 sorry. Which agenda item is this?

9 MS. WARREN: This is number 12.

10 (Attorneys confer)

11 THE COURT: Thank you.

12 (Attorneys confer)

13 MS. WARREN: Your Honor, at the last hearing --

14 THE COURT: I apologize because in taking a look at
15 that item, I must have misunderstood what was in the binder,
16 because the only thing that I had on my own notes and my law
17 clerk's notes, too, were notes from the last hearing. So I
18 apparently didn't appreciate the fact that the Orders that were
19 being submitted were after the last hearing, so I'm sorry.
20 That's where the confusion is because I look at the binders and
21 I didn't understand why I wouldn't have seen the Order. That's
22 the reason why. I must have seen it and ignored it, thinking
23 that it was from the last hearing.

24 MS. WARREN: All right. And just to clarify, the
25 insurers did submit an Order for your binder last Monday. We

1 did get a draft from the FCR late Friday afternoon and we've
2 never seen anything from the Debtors, so we --

3 THE COURT: I gave you them, so --

4 MS. WARREN: -- did give you something to consider
5 early on.

6 THE COURT: Okay. Thank you.

7 MS. WARREN: So anyway, to go back to the matter at
8 hand, at the lasting hearing in response to the insurers' 2019
9 motion Your Honor did ask that the insurers go and draft an
10 Order that would clarify the scope asbestos PI estimation;
11 namely, that the purpose was for funding, determining the
12 adequacy of funding of the Plan, and not for insurance coverage
13 issues, and to ensure that the Debtor's insurers wouldn't
14 suffer prejudice by virtue of not participating in the PI
15 estimation.

16 We did draft that. We did show it to the Debtors, to the
17 FCR, and the ACC. We actually believe the Debtors and the ACC
18 or I'm sorry, the F -- the FCR and the ACC are conceptually
19 fine with it, but they do -- they did have some wording
20 changes, and the FCR did give us an Order later on Friday. The
21 Debtors, as far -- the last we heard before today, just said
22 no, we don't like it.

23 So let me go through it with you, Your Honor, and let you
24 know that we think it really does accurately reflect your
25 intentions. I'm going to skip over the whereas clauses. We

1 can come back to those, if you like.

2 THE COURT: No. I'm going to read this on my own. I
3 can tell you right now it's a six-page Order, I think, or five-
4 page Order, and I apologize for not having done it in advance.
5 It was simply my misunderstanding of what was in the binder.
6 But I'm going to do it on my own in connection with the
7 transfer. If there's something specific you want to highlight,
8 Ms. Warren, please do. You don't need to read the whereas
9 clauses to me. I will be reading them on my own.

10 MS. WARREN: All right. Then let me just point out
11 paragraph 2, which I think maybe gets to the gist of what the
12 issues are here, and that's the so ordered paragraph # 2 on
13 page 3 --

14 THE COURT: All right.

15 MS. WARREN: -- of the proposed Order. It has three
16 parts and all of the parts are necessary. And everything else
17 in the Order either flows from this or is just -- are
18 provisions to effectuate the Court's jurisdiction and ability
19 to enforce compliance. Again, this is limited to PI
20 estimation. We're not going to issue as a Plan confirmation,
21 Plan neutrality, nothing like that. Just with respect to PI
22 estimation.

23 Number one, "This Order clarifies that it shall apply only
24 to the determination of the adequacy of funding for the Plan."
25 Then there's two other parts that provide what this Order --

1 what the PI estimation is not.

2 Part two of paragraph 2 says, that "the PI estimation
3 shall have no impact on issues of insurance coverage." And,
4 again, that's straight forward.

5 Part three is intended to effectuate and clarify the
6 Court's intent in issuing this Order or whatever Your Honor
7 determines to issue, and that is that "findings made with
8 respect to the PI estimation are not intended to affect or
9 support a UNR or Fuller Austin type of result."

10 And, Your Honor, that is very tellingly the big issue that
11 the Debtors don't want to agree to. And, Your Honor, at the
12 last hearing you asked the courtroom at large, you asked the
13 Plan proponents is there anything else you want to get out of
14 this PI estimation? Anything else than determination of the
15 adequacy of the funding of the Plan? And you were met by a
16 deafening silence.

17 This provision just makes that clear; that there's nothing
18 that's going to come out of this PI estimation with respect to
19 insurance coverage.

20 THE COURT: Well, it seems to me that I can make this
21 one a lot easier by saying the Court's findings with respect to
22 the PI estimation shall apply only to the determination of the
23 adequacy of funding for the Plan and will not determine issues
24 of insurance coverage or the obligation of any insurer to
25 provide indemnity for asbestos PI claims, if that much of this

1 Order is agreeable to people and that should end it. Because
2 I'm stating affirmatively that I am not determining issues of
3 insurance coverage.

4 MS. WARREN: Your Honor, that certainly is something
5 that the insurers are in favor of and thank you for that. But
6 let me just say with respect to part three, we're not -- I
7 understand that Your Honor isn't saying, well, I can control
8 what another later coverage court might rule.

9 THE COURT: Right.

10 MS. WARREN: I understand that. That's not what this
11 is trying to do. This is trying to make your intention clear
12 and the reason it's in there is because in Fuller Austin, which
13 as Your Honor knows, is a concern here, the Bankruptcy Court
14 did say to insurers go away, you have no standing, and later
15 the Fuller Austin State Court said, oh, well, that didn't
16 really mean that the insurers weren't bound by all of this.

17 Now, Fuller Austin had issues of California State Law that
18 were unique and so on, but the fact is it's out there and
19 that's why this provision is in here. We're not saying that
20 Your Honor is predicting how another court will rule later on
21 down the line. This is just -- this is intended to just make
22 this Court's intention clear, for whatever purposes later on.

23 THE COURT: Well, I will consider it, Ms. Warren. I
24 don't know whether I have the authority to give that type of an
25 opinion or not, but I will consider it.

1 MS. WARREN: All right. One more thing on that, Your
2 Honor, and then I'll sit down. But, Your Honor, the -- you
3 said at the last hearing, which is absolutely right, that you
4 have the ability to control your own docket. You have the
5 ability to state what your intentions are in making findings
6 and conclusions. That's all that this does.

7 THE COURT: Okay.

8 MS. WARREN: Thank you.

9 THE COURT: I understand the point. I'll see where I
10 can go.

11 MR. ESSERMAN: Your Honor, Sandy Esserman on behalf of
12 Barron and Bud, and Reaud Morgan. There are four responses
13 filed to the hearing last month. I filed two of them. I don't
14 believe anyone shared any of their Orders with me at all, and I
15 trust Your Honor to -- if Your Honor wants to enter an Order,
16 that's fine. But all of these Orders that have been flying
17 around, the FCR, for some reason I haven't gotten them.

18 THE COURT: I haven't either. At least as far as I
19 know, so if I have, I haven't seen then.

20 MR. ESSERMAN: But I have -- they -- I haven't even
21 gotten what was handed up to you, so I just wanted to make sure
22 that was clear.

23 THE COURT: Okay. Well, maybe it's in the binder, Mr.
24 Esserman. Okay. My clerk's telling me that this proposed
25 Order actually doesn't show up on a docket as having been

1 filed.

2 (Court and clerk confer)

3 THE COURT: On the -- as of the date of the amended
4 agenda, which was the 19th.

5 MR. COHN: That's true. If I may speak for a minute?
6 Jacob Cohn for Federal Insurance Company, Your Honor. I think
7 what had happened with respect to that was the insurers were
8 hoping that we might get to a consensual Order with at least,
9 if not the Debtors, then with the asbestos Claimant
10 constituencies and we held off on filing anything and that it
11 came to the point where weren't going to get there, so nothing
12 officially got on the docket. It wasn't anything trying not to
13 give notice to people. We were just hoping that we might get
14 somewhere, but we also wanted to get something in your binder,
15 so at least you would have read something.

16 THE COURT: Okay. Well, the problem is that that's
17 the other problem. If it's in the binder, but I haven't also
18 gotten the information from Rachel, my staff, then I basically
19 don't have a double check to know that, in fact, there's
20 something there that I should be looking at because sometimes
21 the agenda letters, not necessarily in this case, but sometimes
22 they're not really accurate in determining what's in a binder.
23 One of the cases today, for example, has a #31 that has no
24 information in it that's relevant to #31. It's just the way
25 they are, so I don't usually look at the letters for that

1 purpose. It was confusing me more than helping.

2 MR. COHN: But, Your Honor, I just wanted to point out
3 very quickly and one of the things I thought got a little lost
4 here is to say it will not affect insurance coverage issues, I
5 think I pointed this out on the transcript last time, does not
6 cleanly address our concerns because what has happened, and
7 especially happened in Fuller Austin, was that later on in
8 coverage litigation, counsel turned around and said that the
9 confirmation, and I don't want to pre-empt the fact that
10 neutrality is in Your Honor's estimation, a Plan confirmation
11 issue.

12 THE COURT: Right.

13 MR. COHN: But they said that the confirmation, for
14 example, would be a judgment, or an adjudication, or the
15 imposition of legal liability.

16 THE COURT: But this isn't a confirmation. This is
17 only talking about the estimation process.

18 MR. COHN: I agree.

19 THE COURT: I'm certainly -- this is certainly not
20 going to be a Plan Confirmation Order. Let me make that very
21 clear. Nothing that I'm dealing with in these submitted Orders
22 in agenda #12 has anything to do with a Confirmation Order.

23 MR. COHN: I --

24 THE COURT: It has to do with the estimation process.

25 MR. COHN: Agreed, Your Honor.

1 THE COURT: Okay.

2 MR. COHN: And Mr. Lockwood said that it is not a
3 502(c) estimation. I just wanted to suggest to Your Honor that
4 perhaps you could add some language in here to make it clear
5 that the result of the estimation and the process will not be
6 anything --

7 THE COURT: Probably not.

8 MR. COHN: -- that will be an --

9 THE COURT: Probably I'm not going to do that because
10 I think it's going to be an advisory opinion, but I'll think
11 about it.

12 MR. COHN: Thank you.

13 THE COURT: I will think about it.

14 MS. BAER: Your Honor, when you began to address this
15 issue, you stated what you believed was your ruling last time,
16 and I whole heartedly agree with you. The problem is we've got
17 a five-page Order from the insurers and guess what? It's not
18 the paragraph she was talking about that bothers me.

19 I have some issues with the language, although they're not
20 major. What I have problems with is everything else. They
21 over complicated by taking what you said and then trying to
22 explain it seven different ways. And paragraph after paragraph
23 I have problems with because, at the end of the day, we
24 absolutely reserve the right to say a Confirmation Order is a
25 judgment; and, therefore, we know what comes from that or what

1 a court can say can come from -- comes from that.

2 What they do is they talk about PI estimation and then
3 they say, or proceedings, or other undertakings, or other
4 litigation, and the next thing I know I'm afraid we've got an
5 Order that says I've got a problem on confirmation.

6 THE COURT: Miss Baer, I don't generally write -- I
7 tend to be verbose in opinions, but my Orders do -- usually
8 tend to be one sentence. Something to the effect that it's
9 granted or it's denied. There won't be a lot more than that in
10 this Order.

11 MS. BAER: Your Honor, what I might suggest is the
12 future claims rep did draft an Order. He did circulate it and
13 I actually like the Order except for one --

14 THE COURT: If you folks want to circulate an Order,
15 just do it on a Certification of Counsel this time. Not
16 something that's not filed on the record and it appears in a
17 binder. Do it as a Certification of Counsel. If you can't
18 agree, submit all of your drafts. I'll consider all of your
19 drafts, and then I'll do my own Order.

20 MS. BAER: That's what I'd suggest, Your Honor, would
21 be the best thing to do here.

22 THE COURT: Fine. Then how -- just do it before the
23 next hearing then, so that I have a chance to consider it
24 before the next hearing.

25 MS. BAER: We will do so, Your Honor. Thank you.

1 THE COURT: All right. Okay. Anybody who wants to
2 submit an Order, go ahead and do it. Yours, Ms. Warren, has
3 already been, I guess, submitted to the Debtor, but maybe not
4 to some of the other parties, so I think you need to circulate
5 it.

6 MS. WARREN: We've circulated it to all of the other
7 parties, Your Honor.

8 THE COURT: All right.

9 MS. WARREN: Believe me.

10 THE COURT: Okay.

11 MS. WARREN: And we're happy to do it again, but it
12 would have been useful, to say the least, if these parties had
13 submitted proposed Orders before today.

14 THE COURT: Yes, it would.

15 MS. WARREN: And we think that this is another effort
16 to delay resolving the insurers' status here.

17 THE COURT: I thought I've already resolved the
18 insurers' status. All I'm trying to do is the ministerial act
19 of putting what I've already ruled onto paper.

20 MS. WARREN: Yeah. Understood and I understand Your
21 Honor will consider what apparently are now competing Orders,
22 although we didn't know that.

23 But one point about our Order is Ms. Baer keeps
24 complaining that it's long. The fact that something's long
25 doesn't mean that it's wrong. We actually thought very

1 carefully about the wording of this Order and it's meant to
2 take into account the complexities of insurance policies and
3 evidentiary findings --

4 THE COURT: I am not --

5 MS. WARREN: -- and so on.

6 THE COURT: -- doing insurance coverage litigation,
7 Ms. Warren. If I were going to be doing all of the insurance
8 complexities, then you'd be here in a whole different capacity
9 with standing, so I can assure you, I'm not going to be making
10 all of those findings. The whole purpose for which I'm pushing
11 this off is so that I don't have to make all of these findings.

12 But I will consider everything in your Order and whatever
13 anybody else wants to submit. If I don't have a resolved Order
14 on a Certification of Counsel by the time that the, I guess,
15 preliminary binders or are they already due? This is a short
16 week.

17 MS. WARREN: Shall we say that we should submit the
18 Orders -- the, I guess, competing Orders by what? November --

19 THE COURT: Why don't you --

20 MS. WARREN: -- 7th?

21 THE COURT: Yes. Submit them to the Debtor, I think,
22 then have the Debtor attach all competing Orders to one
23 Certification of Counsel, so I have them in one package. I
24 will consider them all and draft an Order, if you haven't
25 agreed.

1 MS. BAER: Your Honor, when would you like us to
2 submit that?

3 THE COURT: Can you do this? Can you try to get
4 together and see if you really can resolve this by -- and still
5 submit something by the 7th of November, which is a week before
6 the next hearing?

7 MS. BAER: Sure.

8 THE COURT: Fine. Then I'll expect a certification
9 one way or the other by November 7th, either with an agreed
10 Order or else with all of your competing Orders attached.

11 MS. WARREN: All right. And I -- Your Honor,
12 hopefully you will give special consideration to our Order
13 because it is the insurers' view of what will get rid of these
14 issues in the PI estimation period. The Debtors, FCR, they do
15 not understand our situation as we do, so, respectfully, thank
16 you, Your Honor.

17 THE COURT: I will consider it. Okay. What else?

18 MS. BAER: Your Honor, I believe that concludes the
19 formal agenda, although I believe Mr. Hurford had something he
20 wanted to take up with the Court.

21 THE COURT: Mr. Hurford?

22 MR. HURFORD: Thank you, Your Honor. Mark Hurford of
23 Campbell & Levine on behalf of the Asbestos PI Committee. I
24 stand to raise an issue with Your Honor with regards to the
25 mechanics for responding to the asbestos personal injury

1 questionnaire and to back up just a little bit. We've been
2 fielding a lot of phone calls from firms that are asking about
3 the actual mechanics of responding to the questionnaire, spaces
4 provided aren't large enough. Can we use electronic
5 formatting, so forth, and so on.

6 Most of that we've been able to resolve either through
7 dealing with the Debtor's counsel or through Rust. I
8 understand individual claim firms have been calling or Claimant
9 firms have been calling him as well. As of the beginning of
10 last week it looked like we were going to have an issue. We
11 ended up filing a motion on Friday afternoon. It's a Motion to
12 Clarify how they can mechanically respond. Like I said, it has
13 nothing to do with the substance of the questions. The order
14 of the questions, anything else.

15 We also filed a Motion for Leave to Shorten Notice or a
16 Motion for Short Notice, so that we could get it on for the
17 November 14th hearing. Now, late Friday, kind of end of the
18 weekend, we were able to reach a resolution with the Debtors
19 and our plan is this. We've put the motion on file. We've
20 circulated it to Claimant firms and we've basically told them,
21 hey, if you have other issues than what's raised in the motion,
22 please file a response, but I would like to read for Your
23 Honor, onto the record right now. It's just half a page, what
24 the resolution is between the ACC and the Debtors, so that we
25 can distribute this as well and tell people, hey, this is how

1 you can actually respond mechanically.

2 THE COURT: I haven't even seen the motion, so if
3 you're asking me for a ruling today, you're not going to get
4 one.

5 MR. HURFORD: I'm not, Your Honor.

6 THE COURT: Okay.

7 MR. HURFORD: All I'm asking is if I can read this
8 into the record. Debtor's counsel knows this is actually their
9 revised version, so that we can start dealing --

10 THE COURT: All right. Let's do it quickly.

11 MR. HURFORD: Thank you. "Asbestos personal injury
12 Claimants may take the questionnaire, convert it into some form
13 of electronic format (Microsoft Word is Rust's preferred
14 format), however the questionnaire may also be converted to
15 Word Perfect or other format which requires" -- I'm sorry,
16 "which will allow all responses to be typed in, respond to the
17 questions, which may alter the length or pagination of the
18 questionnaire, and then either print out the completed
19 questionnaire or convert it into a PDF format when submitting
20 it to Rust. This will be acceptable as long as the order and
21 the substance of the questions are not changed and the unique
22 Claimant identification provided" -- I'm sorry, "unique
23 claimant number provided on the cover of the original packet is
24 provided on any modified form and attachments. If the
25 questionnaire is provided to Rust in electronic form, the

1 Claimant must still sign the questionnaire, however Claimants'
2 signatures may be provided in PDF format. Asbestos personal
3 injury claimants may provide the questionnaire, questionnaire
4 responses, and any documents attached to the questionnaire to
5 Rust in electronic format, such as a CD-Rom." That's it.

6 THE COURT: Does Rust have a web site and the Debtor
7 have a web site?

8 MR. HURFORD: I believe the Rust does have a web site.

9 THE COURT: Why don't you both post it on the web
10 sites in the appropriate Word and Word Perfect format, so that
11 people can simply copy it, and then you don't lose the ability
12 or the fact that they're going to not answer all of the
13 questions, so that they can have the copy. If it's in Word or
14 Word Perfect format, they can, you know, put in their answers
15 and however many pages it takes.

16 MR. HURFORD: I think, Your Honor, that was
17 actually --

18 MS. BAER: It's --

19 MR. HURFORD: -- proposed in USG and Rust is the claims
20 processing agent, USG, where they were going to post it, so it
21 could be downloaded, but obviously Claimant firms don't want to
22 have to be handwriting all of these responses. Some of the
23 response -- the blanks for the responses aren't large enough.

24 THE COURT: Well, that's fine. I appreciate the fact
25 that somebody may need it in another format, but, you know, to

1 expect somebody to sit and type it all, if they don't want to
2 answer the question, you're not going to get the question
3 typed. If you post it on a web site, and they can download it,
4 I think that's going to be a lot easier.

5 MS. BAER: That's under consideration, Your Honor. I
6 think it may occur very shortly.

7 THE COURT: Okay. In any event, I don't have a
8 problem with the change in format, so that, you know, people
9 have enough room to adequately respond.

10 MR. HURFORD: Thanks, Your Honor. And the Motion for
11 -- to Shorten Notice is obviously -- has been filed. We can
12 send a copy to your Chambers, but we missed the deadline for
13 the November 14th hearing. If we went forward to December
14 19th --

15 THE COURT: Well --

16 MR. HURFORD: -- we would be in trouble for the
17 January --

18 THE COURT: Are you going to --

19 MR. HURFORD: -- 12th deadline.

20 THE COURT: -- have a November 14th hearing on this?

21 MR. HURFORD: Only if individual firms raise other
22 issues or this somehow doesn't resolve it. I would imagine if
23 they post it on the web site, that's going to go a long way to
24 resolving it, but we just wanted to leave it open because as
25 many firms that are out there --

1 THE COURT: All right.

2 MR. HURFORD: -- you can name the question.

3 THE COURT: You'll deal with it on a Certification of
4 Counsel or whatever as appropriate or else it'll hit the agenda
5 next month, and I'll see if there's anything else. But I don't
6 have a problem with a downloadable format.

7 MR. HURFORD: Thank you, Your Honor.

8 THE COURT: Okay. Anything else?

9 MS. BAER: No, Your Honor.

10 THE COURT: We're adjourned. Thank you.

11 (Court adjourned)

12

13 CERTIFICATION

14 I certify that the foregoing is a correct transcript from the
15 electronic sound recording of the proceedings in the above-
16 entitled matter.

17

18 *Lewis Parham*

10/28/05

19

20 _____
Signature of Transcriber

Date